

Instructor Clericalis:

The Third Part.

BEING A
COLLECTION
OF
Choice and Useful Precedents
FOR
PLEADINGS,

BOTH IN THE
King's-Bench and Common-Pleas:

VIZ.

- I. In Twelve several Branches of *Abatement*, and Judgments thereon.
- II. In Ten General Bars to the Action.
- III. Special Bars in *Case*, (*viz.*) Slander, *Assumpsit*, Disturbance, Misfeasance, Malefeasance, Negligence, Trover, Deceit, Nuisance, Rescue and Escape; with the Pleading of *Uncore Prist*, or *Adhuc Paratus*.
- IV. Bars in *Covenant*, with Averments, Protestations, Traverses and Pleas after the last Continuance; and also many special Rules concerning the Bar, Replication, Rejoinder, Surrejoinder, &c. Methodically digested into Rule and Precedent for the farther Instruction of young Clerks.

By R. G. A Clerk of the Court of Common-Pleas. *Useful for the Clerks and Attorneys of the same Court and Queen's-Bench, &c.*

The Third Edition, with Additions.

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TO THE
READER.

I*T is needless to recommend a Book of this Nature, by telling how much the Learned in all Times have advised others to the Study thereof: There is scarce a Book of Pleadings extant, but makes Mention of the Advice of Littleton, and the Commentary of the Lord Coke thereon. The many Benefits that occur from the Knowledge and right Use of Pleading, are no less known to the Sages of the Law, than are the many Mischiefs which happen by the Contrary. And if the many Causes that are lost through Mispleading, and the several Advantages that are slip'd through Ignorance of Time and Matter, be duly considered; then it will certainly appear, that this Book is come forth in a proper Time, and for a publick Advantage. There is not any Branch belonging to the great Body of our Law, that is attended with so many Accidents as that of Pleading:*

To the Reader.

Therefore well may good Pleading be recommended, and Littleton's Advice to his Son followed; which is, To employ his Courage and Care to learn the Science (as he properly observes it) of Well Pleading.

The Books of Precedents for Pleadings that have been hitherto published, are many in Number, some of which contain many long and unnecessary Pleas, little useful, and others of them are obsolete. The Method of this Book is wholly New; the Precedents carefully collected; the Rules and Directions plain and easie; wherein I have much enlarged, and that it may be more useful to those for whom 'tis chiefly intended: And thereby have endeavoured to make it the most Compleat of any yet extant. Being chiefly thereto encouraged, from the general Acceptation the first Impression of this Book has hitherto met with; I therefore gladly subscribe my self,

Your Servant, &c.

R. G.

OF
P L E A S
AND
P L E A D I N G S.

PLEADINGS, largely taken, are all the Sayings of the Parties to Suits or Actions, after the Count or Declaration; as,

- Pleas in Abatement.
- Bars.
- Replications.
- Rejoinders.
- Surrejoinders.
- Rebutters.
- Surrebutters, &c.

And every Plea must be pleaded either in Plea in Bar, Bar to an Action brought, or in Abatement what. of the Writ, Plaint or Count, upon which the Action is brought, (unless the Defendant

Advantage and Method

dant admit not the Jurisdiction of the Court, in which case he ought first to take that Advantage.)

Peremptory. A Plea in Bar to the Action brought, is said to be either Peremptory and Perpetual, and will for ever overthrow the Plaintiff's Action:

Temporary. Or else Temporary for a Time only, but afterwards may cease or fail; as *Plene Administravit* is a good Plea, until it appears that more Goods came to the Executor's Hands.

Replication. A *Replication* is an Exception of the Second Degree made by the Plaintiff to the Defendant's Plea or Bar.

Rejoinder. A *Rejoinder* is the next Degree, which follows the *Replication*, and is the Defendant's Exception or Answer to the Plaintiff's *Replication*.

Surrejoinder. *Surrejoinder* is a Second Defence of the Plaintiff's Action, opposite to the Defendant's *Rejoinder*.

Rebutter. If the Defendant answer any further, 'tis called a *Rebutter*. And,

Surrebutter. The Plaintiff's further Answer thereto, is called a *Surrebutter*: And it may sometimes happen a *Demurrer*, and *Joinder in Demurrer*, to follow these.

Advantage of Pleading in Abatement. But it is further to be noted, That the Defendant may many Times have Advantage of the Plaintiff by Pleading in Abatement, *i. e.* to cease the Plaintiff's Suit for that Time; and this requires a special Observation: For as there are some Things, which often come between the Declaration and the Plea in Bar; as *Dies Datus*, Continuance, Imparlance, &c.

As in 19 H. 6. which says, a *Dies Datus* is a Day given by the Court for the Appearance of the Party, and is before the Count, and an *Imparlance* is always after the Count.

So these Pleas in Abatement must generally come between the Declaration and Continuance, &c. otherwise the Defendant's Advantage will be quite lost, especially in the following Cases. As,

The Time when to be observed.

1. Where the Plaintiff, being an Infant, doth not come by his Guardian.
2. Where the Plaintiff doth not name those that have Right with him, as Executors, Jointenants, &c.
3. Where the Plaintiff sues in more Names than he should.
4. Or where he sues with others, as are not in *rerum natura*.
5. When the Plaintiff is excommunicated or outlaw'd.
6. When the Defendant can prove he tendered the Money at the Day, & *ad hoc paratus*, — &c.

All these Pleas in Abatement ought to be pleaded the same Term before a *General Imparlance*, and to have Councils Hand to them.

To be pleaded the same Term.

And note also, That a direct Appearance or Continuance only (as is before hinted) may be a Detriment to the Defendant, as in case of *Misnomer*, where the Defendant is misnamed; and therefore the Way in such Case is to appear specially in this or the like Manner, viz. *N. B. qui implicatur p nomen N. C. com puit & habet diem, vel petit li-*

Special Appearance.

cenciam interloquendi, vel petit visum, &c. Salvis sibi omnibus advantagiis, &c.

Imparlance.

And regularly after an *Imparlance General* (though one may plead in Bar, or to the Action) he cannot plead to the Jurisdiction of the Court, *Misnomer*, or to the Writ, or in Abatement of it, nor any Priviledge or Disability (except the Thing happen after the Continuance, and it be abated as by Death); so neither then ought the Defendant to have Oyer of a Deed except he plead Variance, or that the Writ was brought in another County; and though the Defendant need not plead to a Declaration on a Bond before he hath Oyer of it, yet he may plead without Oyer if he please, but then he cannot afterwards waive his Plea and pray Oyer. *Kitch. 200. Pract. Reg. tit. Oyer.*

Oyer.

Special Imparlance.

However, upon a *Special Imparlance* it is otherwise, for thereby the Defendant saves his Advantage, as well to the Writ as to the Declaration, by the Words, *Salvis sibi omnibus & omnimodis advantagiis tam ad Breve qm̄ ad Narrationem*; and sometimes thus, *Salvis sibi omnibus advantagiis tam ad Jurisdictionem Curie qm̄ ad Breve & Narrationem*, as the Case is.

And though the *General Imparlance* be of Course, yet this *Special Imparlance* must be by Rule or Order of Court, or by Consent at least.

Yet it is said, that after a *General Imparlance*, one may plead *Joitenancy*, *Nontenure*, and the like, whereof he is not estopped by his Appearance. 9 *Ed. 4. 36.*

Also

In Pleading.

Also it is said to be Practice, That if no *Impar-
lance* appear upon Record, he may plead in
Abatement, &c. And if a *Special Impar-
lance* be prayed, the Plaintiff's Attorney takes of the
Defendant's 2 s. for the Entry thereof. *Vide*
Compl. Att. & Sol. pag. 38, & 294.

From this it appears, That if the Defendant will take his Advantage, and plead in *Abate-
ment*, regularly he must plead it before a *General
Impar-
lance*. And it is to be further observed,
That in good Order of Pleading, a Man
ought to plead,

The Time
and Order of
Pleading.

1. To the Jurisdiction of the Court.
2. To the Person of the Plaintiff, and next
of the Defendant.
3. To the Count or Declaration.
4. To the Writ.
5. To the Action of the Writ.
6. To the Action it self, in Bar thereof.

1. A Plea in Abatement to the Jurisdiction
of the Court, is called a *Foreign Plea*, because it
either alledges, That the Matter ought to be tried
in another Court, or else refuses the Judge as in-
competent, for that the Matter in Question is not
within his Jurisdiction. *Kitch. fol. 93.* As *Ancient
Demesne, County Palatine, Cinque Port*, Pleas to the
Palace Court of *Westminster*, and other inferior
Courts, not having Cognizance of the Cause, &c.

To the Juris-
diction of the
Court.

2. Pleas to the Person have been formerly
accounted Six, as *Villinage, Utlary, Alien, Out-
of Protection, Professed in Religion, and Excommu-
nication*, (though it's said, *Profession* or *Alien* may
also be pleaded to the Action;) and others
say, That to plead *Foreign Profession*, is no Plea
at this Day.

To the Per-
son.

3. Pleas

To the Count
or Declara-
tion.

Pleas to the
Writ.

3. Pleas to the Count or Declaration are, *Variance between the Writ or Count, Specialty or Record, Incertainty in the Plaint or Count, &c.*

4. Those to the Writ are, for *Variance between the Writ and Register, Incertainty, Death of Parties, Misnomer, Joinder, Non tenure, Non habetur aliqua talis Villa*, and the like, and many Times to the Writ and Bill or Count together.

And it is to be noted, that generally the Cause of Abatement of Writ, Plaint or Count, are either,

1. By the Act of God, as where the Plaintiff or Defendant are dead.
2. Or by the Act of the Party, as when there appeareth in the Writ or Declaration, or both, Want of sufficient and good Matter.
3. Or when (though it be good) it is not certainly alledged.
4. Or the Name of the Plaintiff or Defendant, or Place, is mistaken.
5. Or there be Variance between the Writ, Specialty or Record.
6. Or apparent Repugnancy.
7. Or Incertainty in the Writ, Count or Declaration. 18 Ed. 3. 27.

To the
Action of
the Writ.

5. Pleas to the Action of the Writ are said to be such, as where one pleadeth some Matter, by which he sheweth the Plaintiff has no Cause to have the Writ which he brought but it may be some other Writ; and it's said the Defendant may choose either to conclude to the Writ, or to the Action of the Writ. 26 H. 8. Bro. Brief. 409.

Abatement to the Jurisdiction.

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6. A Plea or Bar to the Action it self, is In Bar of the where the Defendant in any Action pleadeth a Plea which is a sufficient Answer to destroy the Action of the Plaintiff; and may come, and generally does, after a Continuance or General Impar lance.

But note, That if the Defendant first pleads a Plea that doth tend to the Destruction of the Action for ever, he shall not be admitted after to plead in Abatement of the Writ; and yet if there appear Matter in the Record, for which the Writ ought to be abated, then it's said the Defendant may shew it to the Court in Arrest of Judgment.

First, By — Abatement to the Jurisdiction of Courts.

ET predictus A. per C. D. Attorn suu venit & dicit qd Curia Regis Placitum de transgr pdict cognoscere non debet Quia dicit qd locus in quo supponitur transgr illam fieri est & pdict tempore transgr illius fieri supposit fuit vigint acr terre cum ptinentiis vocat R. in S. pdict. Que quidm vigint acr terre cum ptinentiis sunt & pdict tempore quo, &c. necnon a tempore cujus contrar memoria hominum non existit fuer infra pinct Uille de D. in Com pdicto Que quidm Villa est & a tota eodem tempore fuit infra libertatem Quinq Portuum Infra quam quidem libertatem B. D. Dnd Regis non currit nec

For that the Locus in quo is within the Liberty of the Cinque Ports.

nec a tempore cuius contrari memoria hominum non existit currebat set qđ omnes transgressiones conventiones & contractus facti sive emergentes infra libertatem illam sunt & a toto tempore supradico fuerunt determinabil & determinat coram Ballio & Juratis D. pđict p duodecim homines ad hoc summonitos & juratos Et hoc paratus est verificare p̄ut Curia, &c. Unde non intend qđ Curia Regis hic placitum illud cognoscere velit, &c. See *Brownl. Red.* 475. 2 *Mod. Intrad.* 2. *Han. Ent.* 103.

After Imparlance, one shall not plead to the Jurisdiction of the Court. 22 *H.* 6. 7. 22 *Ed.* 4. 23.

Vide Co. Litt. 303. a. Such Pleas ought to be at first, or otherwise the Party shall lose his Advantage.

For that the Lands are only pleadable in the Court of the Manor.

¶ **E**t pđ Def. p J. S. Attorn suum ven & defend vim & injur & petit iudiciu de villa quia dic qđ pđ locus vocat, (&c.) & omnia al terē & tenementa in Manerio pđ tenentur de Domino Willo tertio nunc Rege Angl, &c. qđq omnia terr & tenementa de eodem Manerio sunt & a tempore cuius contrarii memoria hominum non existit fuer in Cur Manerii ill & non alit placitat & placitabil unde petit Iudiciu si Cur Domini Regis hic placitum pđ in hoc casu cognoscere velit, &c.

Repl.
That they are pleadable at Common Law.

¶ **E**t pđ Quer dic qđ villa sua pđicta Erone pallegat Cassari non debet quia dic qđ locus pđ vocat, (&c.) est & a tempore cuius contrarii memoria hominū non existit fuit de, (&c.) in Com pđ

p̄s p̄litabit ad Communem Legem Anglie & non in Cur Manerii p̄s put p̄s def. superius allegabit. Et hoc petit qđ inquiratur per Patriam, &c. See Bro. Red. 504. Thomp. 2. 2 Mod. Intr. 2.

Note, If upon such a Plea in Abatement the Parties go to Issue, and it be found against the Defendant, it is peremptory, and he shall lose the Land; but upon a Demurrer to such a Plea it is not so, but a Respondi Ouster. 22 H. 5. 25. b. 5 Co. III. Yelv. 112. Vide Postea.

ET p̄s N. p̄ G. H. Attorn sui ven & salvis sibi omnibus & omnimodis advantag & excepcion ad villam p̄s petit licenciam inde interloquendi & ei conceditur, &c. Et super hoc dies inde dat est partibus p̄s coram Domino Rege apud Westm usq̄ diem, (&c.) pr' post, (&c.) videlicet p̄fat N. ad villam p̄s interloquend & tunc ad respondend, &c. ad quem diem coram Domino Rege apud Westm ven tam p̄s W. quam p̄s N. per Attorn suos p̄s & idem N. dicit qđ domus & ctm in narratione p̄s specificat sunt parcell Manerii de D. in Com Derby & tenentur de eodem Manerio qđ quidem Manerium est de Antiquo Dominico Cozone Domini Regis nunc Anglie, &c. qđq̄ omnes actiones p̄ aliqua transgr fact sibe ppetrat in & super eisdem domo & clo in Cur ejuldem Manerii & non alibi a tempore cujus contrar memoria hominum non existit triari & terminari debuer usi fuer & consuever & hoc

For that the Lands are held in Ancient Demesne after special Imparlance; but quare of this.

to

Abatement

hoc parat est verificare p^{er} Cu^m, (Et.)
Con^{tra} unde non intendit q^{uod} Cu^m. Unde
Regis hic p^{ro}litum inde cognoscere velit,
Et. See 2 Mod. Intr. 2. Bro. Red. 504. & Repl.
quod tenent. in feodo ad Com. Legem. See also
1 Brownl. Ent. fol. 2. Thomp. 2. & 347. first Part
Mod. Intrad. 249. Winch. En. 517. Et Repl. quod
proavus quer. tenuit tenent. de Rege ut de Castro de
W. in libero Soccagio, &c. & vide Rob. Ent. 250, 348.

How the De-
fendant ought
to make his
Defence.

Note, That the Manner of the Defendant's De-
fence in Pleading is to be considered; for
it is held, that in Pleas to the Jurisdiction,
or the Person, the Defendant cannot make
above half a Defence, as thus, Et p^{ro} A. p^{ro}
J. S. Atroz^{us} su^{us} ven^{it} & defendit vim
& injuriam, without adding the Words,
quando, &c. (which Words make a whole or
full Defence.) And by adding these Words,
the Jurisdiction of the Court and Ability of
the Person are admitted. See 7 H. 6.
35 H. 6. vide Pract. Reg. pag. 244.

Half Defence.

Also in Affize, Dower, Darrein Present-
ment, Mortdancestor, p^{ro} que servicia, At-
taint, & Scire facias, the Defendant shall
only say venit & dicit, without other De-
fence. 34 H. 6. 33. 46 Edw. 3. 23. Bro.
Abridg. tit. Defence, Numb. 67.

Special full
Defence.

Note also, that a full Defence is sometimes
special. For,

In Præcipe quod
reddat, &c.

In every Præcipe q^{uod} reddat, Writ of Intru-
sion, Ayel and Escheat, and the like, the Man-
ner is thus, Venit & defendit jus suum
quando, &c.

Double De-
fence.

And it seems, that in a Writ of Right the
Defendant ought to make double Defence,

to the Jurisdiction.

II

to wit, of the Plaintiff's Right and his own.

1 Cro. 311.

In Actions upon the Statutes of Maintenance, Labourers, and the like, and in *Recap. Sur Stat.* *In Actions*
tionem averiorum, the Defence is thus, *Denit*
& defendit vim & injuriam quando, &c.
& quicquid, &c.

And in Prohibition upon Stat. *Ric. 2.* and *In Prohibi-*
H. 4. the Form is thus, *Denit & defendit* *tion.*
vim & injuriam quando, &c. Et omnem
contemptum & quicquid, &c.

And in Appeal of Mayhem, thus, *Den & In Appeal.*
defend vim & injuriam, Et omnes felo-
nias & appella de Mayhemis, Et quic-
quid quod est contra pacem Und Regis
Coronam & Dignitat suas. 40 Ass. 9.

But in Actions of Account, Case, Covenant, Ordinary full
 Debt, Detinue, Ejectment, Partition, *Barro Defence.*
fracto, Quare Impedit, Replevin, Rescous
 and Waste.

And in all Actions where Debt and Trespas
 are given by the Statute. In all Actions of Tres-
 pas *de Clauso fracto*, or *de Clauso & Do-*
mo fractis, with their Incidents, or for Bat-
 tery, False Imprisonment, Menacing, and other
 personal and mix'd Actions, the Defendant
 shall make the ordinary full Defence, *Denit*
& defendit vim & injuriam quando, &c.
 that is, *quando ubi & quomodo Cur' vide-*
tur. Co. Litt. 127. Bro. tit. Defence, 23, 30,
31, 40, 45. and so in all other Cases where you
 are to defend the Wrong supposed by the
 Plaintiff. *Yelv. 210.*

The Vouchee shall make his Defence thus, *Vouchee's*
Et pñ A. B. ut Tenens p Warrantiam *Defence.*
nam defend jus suum quando, &c.

And

And *note*, That where this ordinary full Defence ought to be made, if it be omitted 'tis no Mistake of the Clerk, but failing in Substance. *Yelv.* 210.

But *Note*, in 2 *Lut.* 1590, &c. in C. B. the Defendant begins his Plea without any Defence, viz. Et p̄d J. p̄ C. M. Attoꝝ suū veni & per auditum brevis, &c. And then pleads in Abatement to one Part of the Narr. because it appeared by the Narr. that the Writ was brought before the Cause of Action, &c. and Non Assumpsit to the other Part. Plaintiff demurs, and as to the Exception that there was no Defence made, the Court said it was only Matter of Form, and the Chief Justice said he had spoken with all the Justices of the King's Bench concerning that Defect, and they told him it was a trifling Thing; and See 1 *Lut.* 7, &c. Inter *Walford* and *Savile*, where it was adjudged a good Plea without Defence upon a special Demurrer, Et quod p̄d C. in plito suo p̄dict null fecit defensionem, &c. And this Cause was over-ruled by reason of the many Precedents which are so, altho' (as the Reporter observes) there are many other Defences; and he adds, that the sure Way is to make Defence in this Manner, Veni & defendū vim & injur', without saying more. *Vide* 1 *Lut.* 8. 9.

Where Two
make a joint
Defence.

Proper Con-
clusion.

Also where Two Defendants join in Defence, they ought not to sever in Pleading. 1 *Cro.* 311.

Also each Plea ought to have its proper Conclusion; as a Plea to the Writ to conclude to the Writ, Plea in Bar to conclude to the Action, and an Estopple to rely on the Estopple; and so

so of the like. *Co. Litt.* 303. Of which more hereafter.

And it is said, that such Places as have special Grant not to be impleaded elsewhere, there they conclude Judgment *de Brevi*, and shall Judgment *de* not conclude to the Jurisdiction. 8 *H. 6.* 18, 19. *Brevi.*

Also, where the Defendant's Plea doth prove *De Brevi*, that the Plaintiff may have another Writ in the same Court, there it's said he shall conclude to the Writ, and not to the Jurisdiction. 38 *H. 6.* 19.

And in Pleas to the Action of the Writ, it's Either to the said the Defendant may choose either to con- Writ or clude to the Writ, or to the Action of the Writ. Action. 26 *H. 8.* *Bro. Brief.* 409. 9 *Edw. 4.* 31.

And 37 *H. 6.* 48. In forcible Entry, if the In forcible Defendant pleads to the Writ, and concludes Entry, how. to the Action, he shall be condemned, because by his Conclusion he hath admitted the Writ to be good, and so he shall be if he plead to the Jurisdiction, and conclude to the Writ.

And by *Prisott*, 37 *H. 6.* 24. If the Plea be Plea in Bar, in Bar, and the Conclusion to the Writ, it shall Conclusion to the Writ. be taken in Bar. See 34 *H. 6.* 1, 2. & 36 *H. 6.* 17. because he cannot have a good Writ, if he be barr'd of his Action.

The Effect of the Pleas to the Jurisdiction.

These Pleas to the Jurisdiction of the Court, true, prevent the Cause to be tried there.

As to plead the Lands in Question, are an- Ancient De- cent Demesne, and ought to be pleaded in mesne. the Court of the Manor of which they are holden; and if they so be, this will abate the Writ before or after Answer. *F. N. B. fol.* 14. d. 18. a.

Foreign Plea.

So also will the Foreign Plea, which refuses the Judge as incompetent, because the Matter in Hand is out of his Precincts; but in this Case the Court doth usually make the Defendant swear his Plea to be true, or else will enter up Judgment for Want of a Plea. *Vide Kitch. fol. 75. Pract. Reg. p. 233.*

Defendant swears to it.

Note, If one pleads to the Jurisdiction of the Court, he ought to give Jurisdiction to another Court. 2 H. 7. 16, 17.

If one pleads to the Jurisdiction of the Court, he shall not oust the Court of Jurisdiction by another Plea afterwards. 22 H. 6. 18, 19.

And if another Court ought to hold Plea the Party ought not to conclude to the Writ but to the Jurisdiction. 38 H. 6. 18.

After a Day given over by Superseas there ought to be another Superseas to the Jurisdiction of the Court. 22 H. 6. 18, 19.

Every one that pleads in Disability of the Person of the Plaintiff, or Demandant, affirms the Jurisdiction of the Court, and therefore cannot afterwards plead to the Jurisdiction. 35 H. 6. 12.

For that the Cause of Action accrued in a County Palatine.

N. E t p d i a' N. p J. S. Attornd su
ben & defendi vim & injuriam
die qd Com Cestr est & a toto tempore
cujus contrar memoria hominu no
existit fuit Com Palentin Edox omne
& singula placita & actiones tam reales
qm personales infra eundem Com emen
gend a toto tempore supradicto placita
& placitabile fuer & existunt infra eundem
Com

Com Cestr coram Justic ibm p tem-
 pore existend & non alibi ad eodem Le-
 gem extra eundem Com Palentinum,
 Et hoc parat est verificare put Cur, &c.
 unde ex quo Causa Actionis p̄d emergit
 infra Com Cestr p̄d idem A. per Ju-
 dic si Cur hic placitum inde ulterius
 cognoscere velit, &c. Vid. Bro. Vad. Me-
 cum 473. & Rob. Ent. 1.

Plea to the Jurisdiction of the Marshal's
 Court, &c.

Et p̄d C. in p̄p̄d persona sua ved C. ad's A. (in
 Et dic qd Cur hic plit̄m p̄d ul- Deb'g; &c.
 terius cognoscere non debet quia dic
 qd Causa Actionis p̄d (a qua eidem A.
 accrebit) accrebit eidem A. extra Ju-
 risdictionem hujus Cur videlicet infra Civit
 Londi in Com ejusdem Civit & non apud
 Southwark in Com Surr vel alibi in
 ea Jurisdicō hujus Cur, Et hoc
 dem C. parat est verificare Unde per
 Judic si Cur hic plit̄m ill' ulterius cog-
 noscere velit, &c.

To this Plea there must be a Counsels Hand,
 and the Defendant must swear the Truth of
 his Plea in Court. But if the Defendant be
 not in Custody, or else special Bail put in, this
 Plea will not be allow'd, altho' the Defendant
 appear in Court. See the Jurisdiction of the
 Admiralty Court pleaded. *Clif. 17.*

See for more Precedents on this Head of
 Plea to the Jurisdiction. *Rast. 58. 101,*
9. 379. Ashton 265, 352. Hern 7. 733.

Thomson 13, 14, 15. 1st of Brown, fol. 2. Num. 6, 13, 14. 2 Mod. Intr. p. 1. Of Abatement to the Jurisdiction.

2ly. By Abatement in Disability of the Plaintiff.

That the Plaintiff is an Alien, born of the King's Enemies, &c.

Repl.

N. **E**t dicit qđ pđ Quer ad breve suū pđ respondē non debet Quia dicit qđ idem Quer est Alienigena natus in Regno sub ligeantia Regis Gallie Adversar Dñd Regis nunc de Patre & Matre Inimicis ipsius Regis Angl & eidem adversar suo adherend oriundus & ingressus in Regn Angl absq salvo conductu ipsius Dñd Regis nunc, Et hoc paratus est verificare ubi quando & pñt Cur Dñd Regis hic considerabitur unde per Judic si pđ Quer ad breve suū pđ responderi debeat, &c.

Et pđ Quer dicit Qđ ipse per aliquos (Et.) pcludi non debet Quia dicit qđ ipse est indigena in Regno Anglie sub Ligeantia dict Dñd Regis Anglie de Patre & Matre Amicis & subdit eidem Dño Regi Oriundus & nat apud (Et.) Et non Alienigena put pđ Def. supius allegavit. Et hoc pet, (Et.) Vide Clerks Assist. 113. 2 Mod. Intr. 3. Clift. 4.

Note, If an Alien Enemy brings an Action Real, Personal or Mix'd, in his own Right, the Defendant may plead it in Abatement, in Disability of his Person, or in Bar to the Action, and the Defendant ought to aver that the Plaintiff is an Alien, born at such a Place under the Allegiance of such a Prince, who is an Enemy

Enemy to the Queen. But an Alien Friend, as he may traffick, and have a House for a Habitation, so he may have an Action Personal and Trespass for breaking his House, (and he may have a Writ of Error upon Necessity, as when he is condemned in an Information) but not real or mix'd Actions: And it is the Lord Coke's Opinion, That if an Alien Friend brings such an Action, it ought to be pleaded in Disability of his Person, and not to the Writ, or to the Action. — But if he be an Alien Enemy, the Defendant may conclude to the Action. *Co. Litt. fol. 130. b. Vide 1 Sand. fol. 5, &c.*

Also an Alien may be an Administrator, and as such may have Leases for Years, as well as Personal Chattels and Debts. *Cro. Eliz. 683. Cro. Car. 8, 9.* Alien Administrator.

And it is said, that an Exception taken to a Writ, *Propter defectum Nationis vel potius defectum Subjectionis vel Alieneantie*, is peremptory; so that the Action cannot be revived by Peace or League subsequent. The Exception is peremptory.

And that the King may grant Licence to Aliens to implead, and also that such Aliens come into the Realm by the King's Licence, or Safe Conduct, may use Personal Actions by Writ, though they be not made Denizens.

And that Denizens lawfully made by the King's Grant, and such Aliens born as are within the express Words of the Statute of 5 E. 3. may use Actions Real by Original Writ. See 32 H. 6. 23. *Digest. de Briefs, lib. 1. p. 6. 7 Co. 1. Co. Litt. 129. a. 130. b.*

It is said, that to plead the Plaintiff is an Alien, is a Plea to the Action; yet where the Defendant concludes to the Person, as he may, he may afterwards demand the View.
3 H. 6. 55.

By 32 H. 6. 23. If one pleads that the Plaintiff is an Alien, he may conclude to the Person, or to the Action at his Pleasure.

To an Action for scandalous Words, 'tis no Plea that the Plaintiff is *Alienigena natus in partibus transmarinis extraligeant Domini Regis, &c.* Yelv. 199. 1 Bul. 134. Vide 1 Lut. 34. Defendant pleads, that the Testator was an Alien. *Replication*, That the Testator at the Time of making of the Bond, and at all Times afterwards by the King's Licence and Protection, was in *England, &c.* Demurs thereupon, and Judgment *Quod respondit ouster.*

For that the Plaintiff is excommunicated.

ff. **E**t p̄dict' A. B. per C. S. Attor' suum venit & dicit qd̄ p̄dict' A. B. ad Breve suum p̄dictum respondere non debet quia dicit qd̄ idem A. excommunicatus existit, Et p̄fert hic in Cur li-
teras patentes venerabilis viri P. P. Sacre Theologie p̄fessoris Archidiaconi nati Ebor' que hoc testantur in hec verba P. P. Sacre Theologie p̄fessor Archinus Ebor' universis Rectoribus Vicariis Curatis ac Clericis quibuscumq; in & per totum Archinatum nostrum Eborum ubilibet constitut salutem, Cum nos (&c.) [recitant Excommunicationem p̄ tout] dat sub Sigillo nostro Archinatum primo die mensis Maii Anno Dñi, (&c.)
sup

super quo idem A. petit qđ loquela pze-
dia' remaneat sine die, &c. Cum hoc
quod pdia' A. verificare vult qđ pdia' Averment.
R. in Billa pdia' mentionat & modo
Quer & pdia' R. in pdia' literis pdia'
Episcopi mentionat est una & eadē per-
son & non alia neq; diversa, &c.

See *Thomp. Entries for the like in B. R. fol. 9.*
Plac. Gen. 9, 10. Bro. Red. 100. Vidian 25.
1 Bro. Ent. 5. 2 Mod. Intr. 3. Clift. 13. Repl',
Quod Quer' absolutus est, Placit. Gen. 10. 72, 76.

Excommunication is no Plea after Impar-
lance, if so be it was not after the last
Term that the Imparlance was granted,
9 Ed. 4. 36. a.

When Excommunication is pleaded, you
shew the Letters Testimonial, that the Party
is excommunicated, which ought to be cer-
tified by the Bishop; and if certified by the
Commisary or Official, is ill. But the Chan-
cellor of an University may certifie Excom-
munication, and the Direction shall be, *Uni-*
versis sancte Matris Ecclesie filiis. 1 In-
stit. 131. a. 8 Co. 68. 1 Roll. 183.

Letters of
Excommuni-
cation to be
shewn, and
who may cer-
tifie them.
Chancellor.

So may the Vicar-General when the Bishop
is in *remotis agendū*, and the Warden in
the Vacancy.

Vicar-Gener-
al.

The Cause for which he is excommunica-
ted ought to be shewn, otherwise 'tis ill; and
the Bishop ought to certify that it was in his
own Court, and not in another, or that he
has found Sentence given by another Bishop;
but he may certify it to be made by his Com-
missary or Official. *8 Co. 68. 1 Inst. 131. a.*
1 Roll. 434, 884.

The Cause to
be shewn.

The Entry
upon this
Plea.

When such a Plea is allowed, the Entry is,
Quod loquela remaneat sine die quousque, &c. Co. Litt. Sect. 201. 8 Co. 69.

The Defendant pleaded that the Plaintiff was excommunicated, *Et pet quod loquela remaneat sine die, &c.*

Plaintiff replies, That he had appealed to the Sentence, *Et pet quod p'dict' Def' respond, &c.*

And the Replication was ill; for it does not maintain his Action. 3 Bul. 72. 20 H. 6. 25. Rast. Ent. 320. Roll. 226.

Excommuni-
cation no
Plea.

Excommunication is no Plea in any Action brought by *Qui tam, &c.* 12 Co. 61.

See more after. *Et vide 1 Lut. 17. Def' placit' quod Quer' est Excommunicat' per Judges Delegates.* Demurrer, *Et respondit ouster Argard quia nul Certificate del Judges Delegate fuit p'duce, Et le Plea male conclude.*

For that the
Plaintiff is a
Popish Recu-
sant.

Et p'dictus A. p. (*&c.*) veni & defendi vim & injur', &c. Et dic quod p'dict' C. ad breve & narr' suam p'dict' responderi non debet quia dicit quod in Statuto in Parlamento die Vñi Reg nunc apud Westm in Com Mid quinto die post Anno Regni sui Anglie, &c. tertio tent edit (int alia) inactat fuit authozitate ejusdem Parliamenti quod quilibet Papalis Recusans (*Anglice Popish Recusant*) qui fuit aut foret convictus in papali recusantia (*Anglice in Popish Recusancy*) staret & reputaretur ad omnia intentiones & pposita (*Anglice Purposes*) disabled (*Anglice disabled*) ut persona legitime

Disability of the Plaintiff.

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legitime & debite excommunicat ac quasi ipsa fuisset denunciata excommunicat secundum leges hujus Regni Anglie quousque ipse vel ipsa sic. disabilitat seipsum vel seipsam conformaret & ad Ecclesiam accederet & Divinum Servitium audiret & Sacramentum Cene Domini reciperet secundum leges hujus Regni Necetiam accipet Sacram (Anglice the Oath) appunctuatum & prescriptum in uno alio Non facto illa eadem Sessione Parliamenti (intitulato An Act for the better discovering and repressing of Popish Recusants) Et quod quilibet persona vel persone sectat (Anglice sued) vel secundo (Anglice to be sued) per talem personam sic disabilitat illi placitaret in disabilitatem (Anglice disabling) talis querentis quasi ipse vel ipsa excommunicatus esset per sententiam in Curia Ecclesiastica puta in eodem Statuto (inter alia) plenius continetur, Et idem A. ulterius dicit quod ad Generalem Sessionem Pacis tenentur apud D. in Com D. septimo die Aprilis Anno Regni die Domini Regis nunc Angl, &c. quinto & Scotie quadraginta primo coram R. O. Mil & Barr C. S. Mil, (&c.) & al Soc suis Justic die Domini Reg ad Pacem in eodem Com D. conservandi necnon ad disabilitat transgressionem & alia malefacta in predicto Com D. perpetrata audiendi & determinandi assignati extitisset presentat quod predictus C. per nomen C. D. de V. in eodem Com Gen (tali die & anno) fuit etatis sexdecim annorum & ultra & non

non accesserat (Anglice, did not repair) Ecclesie Paroch sue nec alicui alie Ecclesie Capelle aut usuali loco communis pactionis ad aliquod tempus infra tres menses prime sequenti p'dicti (talem diem & annu supradictos) set voluntarie & obstinat' abstinuisset ab eisdem (Anglice, had forborn the same) (a p'dicto tali die & anno supradicti) p p'dictum spaciu p'dictu triu mensiu extunc pr' sequenti contra tenorem Statuti in huiusmodi casu nup editi & p'visti ac in manifestu contemptu dicti Domini Regis & legum suorum nec non contra pacem Domini Regis Coronam & Dignitatem suam super quo ad eandem Generalem Sessionem Pacis tenet' apud D. p'dictam coram p'fat' Justiciis dicti Domini Regis die & anno supradictis publica Proclamatio facta fuit iuxta formam Statuti in huiusmodi Casu nuper editi & p'visti qd corpus p'dicti C. foret redditum (Anglice, rendred) Die p'dicti Com' D. ante tunc primam Generalem Sessionem Pacis p Com' D. p'dicta tenend' vel aliter condia' foret p obstin' recusant' secundum formam dictorum Stat in humi Casu p'visti ad qm quidm pr' Generali Sessione Pacis tenet' p Com' D. p'dicta scit a Generali Sessione Pacis apud D. Com' D. p'dicta decimo die Octobris (tali anno) coram p'fat' Justiciis dñi Regis ad Pacem p'dictam C. solempni' erat' fuit & non compuit set defaltat' fecit & corpus suum p'fat' Die Com' D. non reddidit per quod p'dictus

de transgreſſione p̄dicta & contemptu p̄dicto
unde in forma p̄dicta indictatus fuit ſe-
cundum formam Statuti adtunc & ibidem
condictus fuit put p̄ Recordū inde co-
ram p̄ſat Juriſdic ad Pacem apud D.
in p̄dicto Com D. reſiden plenius li-
quet & apparet, Et hoc, (Ec.) Unde
petit Judiciū ſi p̄dictus C. ad h̄c &
h̄ar p̄ſam p̄dicta reſponderi debeat, (Ec.)
Cum hoc qđ idem A. verificare vult qđ
p̄dictus C. poſt p̄dictum decimum diem
Octobris Anno, (Ec.) ſupradicto & ante
diem emanacionis h̄is original p̄dicta C.
ſeipſum non conſormabit & ad Eccle-
ſiam non acceſſit nec Divinum Servi-
cium audivit nec Sacram Ene Dñi re-
cepit ſedm leges hujus Regni Anglie,
Et cum hoc quod idem A. etiam veri-
ficare vult qđ p̄dicta Judicium condi-
tionis p̄dicti C. p̄dicti in plenis ro-
pore vigore & effectu minime reverſa-
rum ſive adnullatum permanet & exi-
ſtit, (Ec.) Vide 1 Brown. Ent. 5. Thomp. 185.
2 Mod. Intr. 5. Clift. 3. 11. Bro. Red. 466.

Et p̄dicta A. per J. B. Attorn
ſuum ven & Defend vim & in-
jur, Et dicit quod ipſe ad villam p̄re-
dicta Quer reſpondere non debet quia
dicit qđ diu ante p̄dicta tempus quo
ſupponitur propalacion & publicacion
p̄dicta Anglicanoꝝ verboꝝ in Narra-
tione p̄dicta ſuperius p̄dicta ſpec qui-
dam C. D. als ſcilicet Termino Sed
Michis Anno Regni (Ec.) in Cur ip-
ſius Dñi Regis apud Weſtm recupe-
raſſet.

For that the
Plaintiff is
outlawed up-
on a Ca' Se'.

rasset versus p̄fāt Quer per nomen
 (Ec.) tam quoddam debm quinquagint
 Librar' quam trigint & quatuor solid
 qui eidem C. in eadem Cur' dicti Dñi
 Regis, coram Justic ejusdem Dñi Re-
 gis adjudicat fuer' p dampnis suis que
 habuit occone detenconis debīt illius
 unde condict' est, Cumq̃ p̄dict' C. p ci-
 tiori obtentione debi & dampnor' p̄dict'
 postea scilicet vicesimo octavo die No-
 vemb̄is Anno (Ec.) supradicto extra-
 dictam Cur' dicti Dñi Regis coram Ju-
 stic ejusdem Dñi Regis p̄secut fuit quod-
 dam h̄ve ejusdem Dñi Regis de Ca-
 Sa versus p̄fāt Quer p debito & damp-
 nis p̄dict' ad tunc Dic R. direct' p quod-
 quidem h̄ve idem Dominus Rex eidem
 Dic p̄cepit qđ caperet p̄dict' (Quer) si
 invent' fuisset (recite the Writ Usque) de
 debito & dampnis p̄dict' ad quas quidem
 Octab Scđ Hillarii coram Justic dicti
 Dñi Regis apud Westm p̄dict' veni p̄-
 dict' Defend' per Attor' suum p̄dict' &
 op se quarto die versus p̄fāt Quer
 de placito & ipse non veni & G. H. At
 tunc Dic p̄dict' Com R. tunc mand' qđ
 p̄dict' Quer non fuit invent' in Ballia
 sua per quod ad tunc & ibidem eidem
 Dic R. p̄cept' fuit qđ erigi faceret p̄-
 dict' (Quer) de Com in Com quousq̃
 utlageretur si non, Ec. Et si, Ec. tunc
 eum caperet & salvo custodiā faceret ita
 quod heret corpus ejus coram Justic
 Dñi Regis apud Westm in Crō Scđ
 Trinitatis extunc pr' sequend ad satisf-
 faciend' p̄fāt C. de debito & dampnis p̄-
 dict'

Return' Vic'.

Exigent.

dia', Et unde, &c. Ad quem quidem
 Crastinū Trid coram Justic' diai Dñi
 Regis pdia' apud Westm pdia' G. R.
 mand qđ ad Com ipsius tunc Dic' tene
 apud Castrum R. vicesimo septimo die
 Martii Ann' (&c.) supradia' pdia' (Quer')
 primo exa' fuit & non comperuit [&
 Et ad quatuor Com R. pdia' p'or', as
 in the Exigent] pdia' Quer' quinto exa'
 fuit & nō Compuir Jo idem Quer' per
 Judic' J. R. & S. C. tunc Coronatores
 diai Dñi Regis Com pdia' utlagat
 fuit, Et idem Def' ulterius die qđ
 utlagat pdia' versus pdia' Quer' in
 forma pdia' promulgat in plenis roboze
 vigoze & effeai suis existit minime re-
 vocat seu adnihilat, Et hoc, (&c.) Unde
 petit Judicium si pdia' Def' p'efat
 Quer' ulterius respondere debeat, &c.
 Cum hoc qđ idem Def' verificare vult
 qđ pdia' Quer' in Narratione pdia' su-
 perius menconat & pdia' (Quer') in
 forma pdia' utlagat est una & eadem
 psona & non alia neq' diversa, &c.

*Retorn' sur
 Exigent.*

*See the next
 Precedent.*

Averment.

Et pdia' B. (&c.) Et dicit qđ ad
 Narr' pdia' A. pdia' respondere
 compelli non debet, Quia dicit qđ qui-
 dam T. S. als scilicet decimo quinto
 die Martii Anno Regni (&c.) prosecut'
 fuit & impetravit extra Cur' diai Dñi
 Regis de Cancellar' sua Anglie (eadem
 Cur' apud Westm in Com Midd' tunc

*Aliter, upon
 an Original.*

*Note, That
 if one plead
 the Purcha-*

ing of a Writ, he ought not to say, That such a Day he purchased
 a Writ, but that he purchased a Writ bearing Date such a Day, re-
 turnable before the Justices, &c.

existed

existend quoddam hze Orig tunc Dic W
 direct' p qd quidem hzebe idem Dñus Ric
 nunc plac' tunc Dic W. pcepit qd idem
 Dic W. pcriperet pd' R. per nomen (Ec.
 qd iuste & sine dilone redderet pzetat
 T. quadragint' solid' quos ei debuit
 injuste detinuit & nisi fecerit & pdia
 T. fecerit pdia' Dic secur' de clam su
 pprosequend' tunc sum per bonos sui

But if one plead the Return
 of a Writ, he ought to plead,
 That *A. B. Vic'* did return the
 same before *G. T.* and other his
 Companions, Justices, &c. 37 H.
 6. 14.

pzedia' R. quod sit coram
 Justic' dicti Dñi Regis
 apud Westm a die Pasch
 in quindecim dies ostensu
 quare non fecerit, Et qd
 idem tunc Dic heret ib
 hze pdia' ad quem diem

coram Justic' dicti Dñi Regis de Banco
 apud Westm ven' pzedia' T. per P. C.
 Attorn' suum & optulit se quarto di
 versus pzetat R. de pzedicto placito
 & ipse tunc non ven' & P. C. W.
 tunc Dic W. Attorn' hzebe pzedia' in
 omnibus servit & execut videlt qd pdia
 T. inven' eidem tunc Dic pleg' de pzet
 hze suum pzedia' videlicet R. C.
 P. W. ac pzedia' R. nichil habuit in
 Ballia sua p quod sum potuit & ipse
 non ven' No p aliud hzebe dicti Dñi
 Regis de Banco pdia' emanend' pceptu
 fuit pzetat Dic W. qd caperet pdia
 R. G. Ec. Et eum salvo, Ec. Ita qd
 heret corpus ejus coram Justic' dicti
 Dñi Regis de Banco pdia' apud
 Westm pdia' a die Pasch in unum
 mensem ad respondend' pzetat' T. de
 placito pdia' ad quem diem coram
 pzetat

Capias.

prefat' Justic' dicti Dñi Regis de Banco
 pñia' apud Westm' ven' pñia' C. per
 Attorn' suum pñia' & op' le quarto die
 versus prefat' R. de plito prediao &
 ipse tunc non ven' & pñia' tunc Dic
 Attorn' qđ pñia' R. non fuit invent'
 in Ballia sua Iđ sicut prius per aliud
 hie, &c. [Et sic recit' le Alias & Plures
 verbatim ut in le Capias] Iđ per
 aliud hiebe dicti Dñi Regis extra Cur'
 dicti Dñi Regis de Banco pñia' eman'
 precept' fuit pñat' tunc Dic qđ exigi fa-
 ceret prefat' R. de Com' in Com' quous-
 que, &c. utlagaretur si non, &c. &
 &c. tunc eum caperet & salvo, &c.
 Ita qđ haberet corpus ejus coram Ju-
 stic' dicti Dñi Regis de Banco apud
 Westm' pñia' in Gaab' Sed Martini
 ad respond' prefat' C. de placito pñia'
 ad quem diem coram prefat' tunc Justic'
 dicti Dñi Regis de Banco pñia' ven'
 pñia' C. per Attorn' suum pñia' & op'
 le quarto die versus prefat' R. de pre-
 dicto placito & ipse non ven' & pñia'
 tunc Dic videlicet R. D. Wil' Attorn'
 hiebe pñia' in omnibus servit' & exe-
 cut' videlicet quod ad Com' suum W.
 tent' apud Castrum W. in Com' pre-
 dicta die Martis Tricesimo die Augusti
 Anno (&c.) pñia' R. primo exaa' fuit
 & non comperuit & ad Com' suum W.
 idem tent' (tali die, &c.) pñia' R.
 hiebe exaa' fuit & non comperuit [Et sic
 recit' le Attorn' exigi fa' verbatim] Iđ
 per Judicium Coronator' dicti Dñi Re-
 gis Com' pñia' tunc utlagat' fuit &
 adhuc

Alias.
 Plures.

Exigent.

Return Sur
 Exigent.

Utlagat'.

Prout per Record.

adhuc utlagat' existit prout per Record & Process' inde in Cur' dicti Dñi Regis de Banco apud Westm' pdia' de Recordo reman' plenius liquet & apparet, Et hoc parat' est verificare unde per' Iudicium si ipse idem B. ad Parr' pdia' R. sic ut prefertur utlagat' existens respondere compelli debeat, &c. Cum hoc, &c. * (Ut supra.)

* Averment.

Utl' pleaded in brief upon a C. S.

ff. **V**EN & Det' vind & injur', Et dicit qd' pdia' Quer' in placito suo pdia' respondere non debet quia dicit qd' quidam S. G. gen' in Cur' de Cod Banco coram Justic' ejusdem Cur' apud Westm' in Cod' Middr' implital' set prefat' H. in quodam placito debi ac postea scilicet Termino (&c.) Anno (&c.) in eadem Cur' recuperabit versus prefat' H. debitum suum pdia' & dampna sua occasione detentionis debi illius unde idem H. in eadem Cur' condict' fuit predictusque H. pro eo qd' non ven' in eadem Cur' de Cod Banco pdia' prefat' Samueli de debito & dampno pdia' satisfactur' scdm legem & consue' hujus Regni Anglie in exigend' pot' fuit ad utlagand' in London' & ea occasione postea scilicet die Lune prox' ante festum, (&c.) Anno, (&c.) utlagat' fuit ad Sextam pdia' S. de pdia' placito unde condict' fuit prout per Record' inde in Cur' Dñi Regis coram Justic' suis apud Westm' residend' plenius liquet & apparet que quidem utlagat' adhuc in suis plen' robore & effectu remanet

manet minime reuersat' seu adnullat',
Et hoc parat' est verificare unde petit
Iudicium si p'edict' Quer' in placito
suo p'edict' respondere debeat, &c.

Note, If he was outlawed in a County,
then say, Posit' ad utlagand' in Com' V.
Et ea octone postea scilicet (tali die &
anno) in Com' V. p'dict' utlagat' fuit
ad sect' p'edict' N. de placito debi p'out
per Record', &c.

VIm & injur' quando, &c. Et di-
cit quod ipse ad narracon' p'dict'
N. dict' respondere compelli non debet
quia die quod quidam T. G. als scili-
cet Termino Pasche Anno (&c.) impli-
tavit p'dict' N. in Cur' de Cod Banco
de plito debi, Et p'edict' N. pro eo qd
non ven' in p'dict' Cur' de Cod Banco
p'efat' T. inde responsur' scdm legem
& cons' huius Regni Anglie in exigend'
p'oit' fuit ad utlagand' in London' &
ea octone postea scilicet die (&c.) p'ox'
post festum (&c.) Anno Regni (&c.) in
London' p'edict' utlagat' fuit put p'
Record' & Process' in Cur' dicti Dñi
Regis nunc de Banco p'edict' residend'
liquet manifeste que quidem utlagat'
N. p'efat' N. in forma p'edict' hñ &
promulgat' adhuc in suis plen' ro-
boze & effectu remanet per ipsum N.
minime reuersat' seu adnihilat', Et hoc
parat' est verificare unde per' Iudiciu'
si ipse idem N. ad narracon' p'edict'
N. sic ut p'efertur utlagat' existend'

*Aliter in
brief upon
Original.*

respondere compelli debeat, &c. Vide *Utl' plitat'* post *Judic'* in debto, *Thompl.* 8, 9. 1 *Bro.* 7. 2 *Mod. Intr.* 4, 5. *Rob. Ent.* 214. *Quer' Utl' ante bill exhibit'*, *Clif.* 14. *Sile post ult' Continuance*, *Idem* 3.

Note, By 21 *Ed.* 4. 54. he that pleadeth an Outlawry in the same Court, may begin at the Exigent, if he will; because good until it be reversed: And that in Debt upon a Recovery, he may begin at the Judgment, or at the Original, at his Pleasure.

See for Precedents on this Head, *Rast. Ent.* 252, 605. *Ast.* 11. 1 *Brownl. part 1. fol.* 5. *numb.* 24, 25. *Thompson, fol.* 9. *numb.* 30, 31, 32, 33.

How to commence and conclude upon Matter apparent in the Writ.

For Matter out of the Writ.

Note, It is said, That when the Defendant pleads in Abatement for Matter apparent in the Writ, he shall commence his Plea so *Petit Judic' de brevi, &c.* and shall conclude in the same Manner, *Mo.* 30.

But if for Matter out of the Writ, as Excommunication, &c. he shall make the Conclusion so, and not the Beginning, — *Und' per' Judic', Et qđ ob Causam pđicta Bill pđicta' cassetur, &c.* *Ibidem.*

The Defendant to be dismissed without Day.

The Writ shall not abate for Excommunication in the Plaintiff or Demandant, but the Defendant shall be dismissed without Day and after Letters of Absolution shewed to the Court, the Plaintiff shall have a Return summons, &c. upon his first Original, *Lib. Sect.* 201.

Disability of the Plaintiff.

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Every Excommunication shall not disable; as if a Mayor, Bailiff, and Commonalty, or any other Body aggregate of many, bring their Action, Excommunication in the Mayor or Bailiff shall not disable them, for that they sue and answer by Attorney; but it is otherwise of a sole Corporation: So if Executors or Administrators be excommunicated, they may be disabled, *Co. Litt.* 134.

Every Excommunication shall not disable.

If a Bishop be Defendant, an Excommunication by the same Bishop shall not disable the Plaintiff, and it shall be intended for the same Cause, if another Matter be not shewn, *Co. Com. Sur. Litt.* 134. a.

Bishop Defendant pleads Excommunication.

If an Executor brings an Action, Outlawry in the Plaintiff is no Plea, because he sues in the Right of another; but it is otherwise of Excommunication, 21 *Ed.* 4. 49. 34 *Hen.* 6. 14. 14 *H.* 6. 14.

Excommunication pleaded against an Executor.

In Real or Personal Actions, where the Damages are uncertain, (as in Trespass, of Battery, of Goods, of breaking his Close, &c.) and are not forfeited by the Outlawry, there the Outlawry must be pleaded in Disability of the Person. — But if the Ground or Cause of Action be forfeited by the Outlawry, as in Action of *Debt*, *Detinue*, &c. the Outlawry may be pleaded in Bar to the Action. *Co. Litt.* 128. a. b. 9 *Dyer.* *Eliz.* 262. 7 *H.* 4. 4. b. 5 *Co.* 109. *Vide* 2 *Lut.* 1513.

Outlawry when to be pleaded in Disability, when in Bar.

When in Covenant upon Breach for 100 *l.* Rent, Outlawry in Bar was held a good Plea; but there being another Breach for not repairing, and nothing pleaded over to that, it was then allowed a good Bar.

When the
Record of
Outlawry is
to be shewed
presently.

When any Man pleads an Outlawry in Disability of the Person, he ought to shew forth the Record *Sub pede sigilli*, (because the Plea is dilatory) unless the Record be in the same Court.

When Day
shall be given
to bring it in.

But if he plead an Outlawry in Bar, he shall have a Day to bring in the Record, *Co. Litt. ib. 6 Eliz. Dyer 228. F. N. B. 241. Stanf. Pl. Cor. 105. Vide 2 Lut. 1514.* Where it is said, there is no need to produce the Record of the Outlawry *Sub pede sigilli* when the Plea is in Bar of the Action, and the Record of the Outlawry in the same Court; and that so it was resolved in *Draycote and Curson's Case*, 1 *Lut. 39, 40.* But if the Plaintiff replies, and pleads *Nul tiel Record*, the sure formal Conclusion of such Plea is *Et hoc parat' est verificare qualitercumque, &c. put Cur' confid, Et quia Justic' hic se advisare volunt super inspectione Recordi p' p'dict' Defend' sup'ius allegat' dies dat' est partibus p'dict' huiusque, &c.* as it is in *Dyer 227, 228.* In which Case, upon the Plea of *Nul tiel Record' d'un Utlary*, the Entry was, *Et dict' est p'fat' Defend' qd' heat Record' huiusmodi die, &c. suo p'cto.* And there it is said that the Record being in the same Court such Entry was not formal: But the Reporter observes, that there are some Precedents in the like Cases, in which the Plaintiff replies that there is such a Record, *Et hoc parat' est verificare p' Record' ill'*, and then the Entry is, *Et pet' qd' Record' ill' videatur & inspiciatur, &c.* as in *Rob. Ent. 100. Hern 278. Bro. Judic' Writs tit' Sci' fal'*

fac, the last Precedents under that Title, & *L. Brownl.* 433. But in none of the said Precedents is any Mention that the Party which pleads the Record, *Habeat Record'* ill at such a Day *suo periculo*.

Vide 1 *Lut.* 39. In Dower the Tenant pleads, That the Demandant is waived. *Re-plication*, That she was Commorant at another Place, &c. Demurrer thereupon, and Judgment for the Tenant.

Note, That in a Count upon a Writ of Waste, the Plaintiff entitled himself to the Reversion by Discent. Defendant pleads in Abatement, that his Title was by Devise, &c. and then traverses the Discent; and it was held a good Plea upon a general Demurrer. *Vide* 2 *Lut.* 1557.

See 2 *Lut.* 1601, &c. where Outlawry in the Testator was pleaded in Abatement to an *Indebitat Assumpsit* for Moneys receiv'd to the Testator's Use.

If one be outlawed at the Suit of one Man, all Men shall take Advantage of it; so in case of an Alien born, or Excommunication. *Co. Litt.* 128.

Where all Men may take Advantage.

See more of Outlawry after in General Bar, by Disability of the Plaintiff pleaded.

Where Attainder upon the Statute of Premunire and Recusancy shall be Disability to the Person of the Plaintiff. See the Statutes, and *Co. Litt.* 128 & 130.

Attainder upon Premunire.

Note, It is said That if one make a full Defence against a Person attainted, by the better Opinion he may afterwards plead, that he was attainted the Day of the Writ purchased, but not after Imparlance, 32 *H.* 6. 23.

Full Defence upon an Attainder.

Debt upon Specialty, the Defendant may plead Outlawry in the Plaintiff, though he hath imparled; for that is a Bar, and entitles the King, 16 Ed. 4. 4.

3ly, By Abatement relating to the Person of the Defendant.

For that the Defendant is one of the Clerks of the Chancery.

ff. **E**t p̄dicitur C. D. in propria persona sua veni & dicit qd' Cur' Dñi Regis hic cognitionem istius placiti here non debet quia dicit qd' Consuetudo Cur' dicti Dñi Regis de Cancellaria sua Regni sui Angl' est & a tempore cuius contrarii memoria hominum non existit usitat' & approbat' fuit qd' Magistri & Clerici Cur' Canc' dicti Dñi Regis nunc & progenitorum suorum quondam Regum & Reginarum Anglie & eorum servientes vel Ministri non Attachientur distringentur capentur nec quovismodo ad respondendum alicui persone de ullo plito compellerentur coram ipso Rege seu coram aliquibus Justiciis secularibus dicti Dñi Regis seu progenitorum suorum quibuscunque perterquam coram Dño Rege in Cancellaria sua super aliquibus placitis transgre' querel' seu demand' (plitis personam dicti Dñi Regis tangen' plitis de libo testio felonis & plitis de Appel' duntaxat except') que quidam Cur' Cancellar' dicti Dñi Regis potestatem habet & a tot' tempore suprad' fuit potestas omnimoda plita aliquos magistros seu Clericos dñe Cur' Canc' tangen' & eorum servientes & ministros (except' p̄cept' except')

except') coram eodem Dño Rege in Cancellaria sua quousq; p̄lita p̄v̄ determinarentur, tenere & terminare & idem C. dicit qđ ipse idem C. est & a tempore exhibitiōis Bille ipsius H. p̄d fuit unus Clicoꝝ C. S. Mil unius sex Clicoꝝ Cur Cane Dñi Regis nunc cujus continua residentia ibidem requiritur & qđ ipse hic intrac' existit in p̄litum ad respondendū p̄dict' H. contra voluntatem suam & contra tenorem libertat' p̄vileq; & consuetud' p̄dict' unde non intendit p̄d Cur dicti Dñi Regis coram ipso Rege p̄litum p̄dictum versus eundem C. D. ulterius cognoscere vellet, &c. Vide Thomps. Ent. 3. Bro. Vade Mec. 497, 500.

That the Defendant is a Master in Chancery. Rept p Orig p̄secut & Att. Bro. Met. Nov. 219.

That the Defendant is a Member of Parliament and Procurator for the Diocess of Oxon. Bro. Met. Novissim. 186. Tit. By a Member of Parliament. Idem 250. 217.

Note, That after an Impar lance, notwithstanding a Salvo of all Exceptions and Allegations, tam ad h̄ve qm̄ ad Parr; yet the Party may not take Advantage of the Privilege of Chancery, for after Impar lance the Court shall not be ousted of the Jurisdiction. 22 H. 6. 7. a. Vide 20 H. 6. Sile p̄ Serviciū An' sex' Clicoꝝ in Cane, Rob. Ent. 210. Vide 1 Lut. 44.

Privilege of the Exchequer pleaded after Impar lance, Salvis Except tam ad h̄ve qm̄ ad Parr, adjudged naught upon Demur-

rer, sed aliter si Salvis omnibus Ex-
ceptionibus quibuscumq. Vide 2 Mod.
Intr. 8. Thomps. 4.

For that he is
one of the
Philazers of
the Common-
Pleas.

ff. **E**t p̄dict' Def. per W. T. Attorn
suum ven & dic quod ipse est &
die exhibet Wille p̄dict' Quer scilicet,
(Ec.) & diu antea fuit unus Philaza-
rior Cur Dñi Regis de Comuni
Banco apud Westm in Com Middr
q̄q̄ omnes huiusmodi Philazarii de
eodem Banco nec aliqui eorū ad respon-
dendū coram aliquibus Iustic seu Mi-
nistris Dñi Regis aut aliis Iudic se-
cularibus quibuscumq. p̄terquam co-
ram Iustic Dñi Regis de Banco p̄dict'
super aliquibus p̄litis seu querelis
(p̄litis de libo tēto felon & appell' dun-
taxat except) contra voluntatem suam
trahi seu compelli non debeat nec a tem-
pore cuius contrarii memoria hominū
non existit consuever juxta libertat &
privileg die Cur de Banco a toto eo-
rundm tempore usitat & approbat Et
hoc (Ec.) unde petit Iudiciū si Cur dici
Dñi Regis hic p̄litum p̄dictum ulte-
rius cognoscere velit, Ec.

For that he is
one of the
Attorneys of
the Common-
Pleas.

ff. **E**t p̄dict' Defend in propria Per-
sona sua ven & dicit qđ ipse est &
die exhibitionis Wille p̄dict' Quer p̄dict'
& diu antea fuit unus Attorn Cur Dñi
Regis de Comuni Banco & in Officio
suo p̄dicto apud Westm in Com
Middr intendend̄ diſſa negotia quam
plurimorū ligeorū dici Dñi Regis in
Banco

Ex Banco illo prosequendū & defendendū ut
 Mod. cor. Attozū psequitur qđqz idem Defend
 & omnes alii Attozū de Banco illo dum
 sic aliqua negotia prosequentur vel de
 tozū tend ad respondendū coram aliquibus
 st & Justic' seu Ministris Dñi Regis aut
 icet, aliis Judicibus secular' quibuscunqz
 aza: preterquam coram Justic' ipsius Dñi
 nuni Regis de Banco super aliquibus pñtis
 iddū Querel' seu demand' que personam Dñi
 i de Regis non tangunt (pñto de libo tēto
 pon: elonitis & Appell duntaxat except) jur:
 Mi: a Consuetud' in eadem Cur' de Banco
 & se: hagenus usitat' & approbat' contra vo:
 i co: unitatem suam trahi vel compelli non
 pñct' debeat nec debeant nec aliquibus tem:
 relis poribus retroact' trahi vel compelli con:
 dun: uerunt Et hoc, (Ec.) unde non in:
 uam: end' qđ Cur' Dñi Regis hic pñtum
 tem: pñct' versus cum cognoscere velit aut
 nind' debeat, Ec.

Per: Et pñct' Quer' dic' qđ per aliqua p
 est & pñctum Defend' superius pñtando
 pñct' Cur' dicti Dñi Regis nunc hic
 ulte: pñctum pñctum versus ipsum Defend'
 pñctus cognoscat quia dic' quod post
 pñct' pñct' Bille ipsius Quer' in
 Per: Cur' dic' Dñi Regis coram ipso Rege hic
 est & versus pñct' Defend' scilicet die, (Ec.)
 pñct' in Cermino, (Ec.) ultimo preterito, p:
 pñct' Defend' p Cons' tunc Justic' de
 Officio Banco apud Westm' pñct' ab exer:
 Com: tend' Offic' und' Attozū in eadem Cur' de
 quam Banco apud Westm' pñct' prejudicat' &
 is in mot' fuit & adhuc existit per quod pri:
 Banco vileg

Repl.
 That he was
 forejudged
 the Court,
 and amoved
 from his
 Office.

Prout per Record.

vileg p̄dict Def. ut unū Attoꝝ in eade
Cur' extunc cessabit & adhuc cessat p̄
per Recordū inde in eadem Cur' de Ban
co coram Justic de Banco ille apud
Westm p̄dict remanendū liquet manifest
& hoc, (Ec.) unde per Judiciū & qu
Cur' die Dñi Regis nunc hic p̄litur
p̄dicta' versus p̄dicta' Defend cognosc
Et quod p̄dicta' Defend ad Billam
suis Quer' p̄dicta' ulterius respondeat
Ec.

*Rejoinder.
No such Re-
cord of fore-
judgment.*

Et p̄dicta' Def. die quod Cur' die D
Regis hic p̄litum p̄dictum versus
ipsum Def. ulterius cognoscere non d
bet quia die quod non hetur aliquod
Record de p̄judicandū & amovendū ip
Defend ab exercendū Officiū unius
toꝝ in Cur' die Dñi Regis de Ban
p̄dicto de Termino, (Ec.) jam ultimo
tū remanendū apud Westm qual id
Quer' superius replicando allegat
Et hoc (Ec.) unde (Ec.)

*Surrejoinder.
Quod habetur
tale Record de,
Ec.*

Et p̄dicta' Quer' dicit quod hetur
Record de, (Ec.) [ut supra] ubi
allegabit Et hoc parat est verificari
Record illud Et dem est p̄fatus quer
Cur' dicti Dñi Regis nunc hic qu
heat Record illud coram Dño Rege ap
Westm die, (Ec.) p̄or' post, (Ec.) p
cio suo. Idem dies dat est partit
p̄dicta' ibidem, Ec.

The like Pleadings may be for a Clerk
Attorney of King's Bench, *mutatis mutandis*

Vide 1 *Lut.* 639. Upon Privilege of an Attorney *de B. R.* Judgment quod respondet ouster.

Vid. Thomp. 4. Bro. Vad. 469. *Vid.* 2 Mod. Jour. 7.

Quod Def. est *Und* Baron quinq; Port., &c. Clerk's Ass. 11. Rob. Ent. 199.

Quod Def. est Deputat' Serbient ad annua. Thomps. 4.

Quod Def. est *Und* Serbient ad Reg' & implic' debet p' Orig. Clerk's Ass. 5. Demurr' inde.

Quod defend' est *Und* Receptor' & Tally Cutter Scaccar'. Thomps. 3.

Quod defend' est *Und* Clie Scacc. Thomps. 118.

Quod defend' est Stannar', &c. Bro. 178.

Quod defend' est *Und* Pecuniar' de Hospitalar'. Thomps. 3.

Quod defend' est Cancellar' Bedallo' & *Und* Universitat' Oxon, &c. Thomps. 5.9.

See 2 *Lut.* 1665. &c. Debt upon a Bond, Defendant pleads Privilege as an Attorney *de C.* Rept that for Five Years before the Original, the Defendant had not prosecuted or defended any Suit, &c. Demurrer thereon, and Judgment for the Plaintiff.

Plaintiff says, The Defendant ought not to plead in Abatement after an Imparlance.

Ec' p'dia' A. die q'd p'd C. ad p'litand' p'd p'litm in cassation' queret' p'dia' per ipsum in forma p'd p'litat' (videt' q'd ipse p're C. tempore leuac'on' queret')

In an inferior
Court.

queret p̄d vel unquam postea non fuit
possessionat de messuagio p̄d cum pertinet
in narr̄ p̄d sup̄ius mencionat in visum
posit) p̄ hanc Cur' recipi vel admitti non
debet quia die qd̄ ipse p̄fat A. ad Cur'
hic tenet 10 die instantis mensis Junii
narrabit vers̄ p̄d C. in plito p̄dia' A.
quem diem p̄d C. ad morandū respon-
suam in cod̄ plito per licenc̄ inde inter-
loquens & p̄litandū ad Partē p̄d usq; p̄
Cur' hic tenens hoc die scilicet 24 die Junii
Et post moratōem & interlocutōem p̄dia'
C. ad Partē p̄dia' in forma p̄dia' p̄litat
bit (put p̄ record̄ inde in Cur' hic re-
manē plentius liquet) Et hoc p̄dia' A. p̄-
rat est verificare p̄ record̄ p̄dia' Unde
per iudiciū Cur' si p̄dia' C. post moratōem
p̄litatōis & interlocutōis p̄dia'
recipiet̄ seu admittet̄ p̄litare vel dē-
cere ut p̄dictum est Et quod p̄dia' C.
stringat reparare Messuagium p̄dia'
cum pertinet posit in visum p̄dia' C.
qd̄ Damna & Custas adjudicent̄ p̄fa
A. p̄ non reparatōe ejusdem Messu-
gii, &c.

Demurrer to
a Plea in
Abatement
by Privilege
pleaded after
an Impar-
lance.

N. **E**t p̄dia' A die qd̄ materia in p̄-
p̄d p̄dicti B. sup̄ius spec̄ min-
sufficiend in lege existit ad p̄d B. p̄litat
suum p̄d vers̄ ipsum A. hēnd manū
nend qd̄q; ipse ad p̄litum p̄dia' modo
forma p̄dia' scilicet necesse non hēt nec p̄
legem terre tenet̄ respondere, Et
Causis moratōis in lege idem A. C.
hic monstrat qd̄ p̄dia' B. alias in
Termino Sed Michis ult̄ p̄terit
C.

C. D. Attorꝝ suum Ven hic in Cur' ad
respondendū p̄dia' A. p̄dia' de plito, Et
tunc defendebat vim & injuriam quan-
do, &c. Et pet' licenciam inde interlo-
quendi hic usq; hunc diem scilicet in Octab
Sed Hillarii ad respondendū eidem A.
de plito p̄dia', Et huit, &c. put pater
p̄dia' Termino Sed Michis ult' p̄terit
capulo 51 per quod p̄dia' B. submitit se
Jurisdictioni hujus Cur' & tot' advan-
tigiū & privilegiū p̄dia' p̄ p̄dia' B. su-
perius petit perdidit & amisit, Ac p̄ co
quod p̄dia' plit' privilegii p̄dia' B. su-
perius plitat' post p̄dia' licenciam inter-
loquendi p̄ p̄dia' B. in forma p̄dia' petit'
hit' p̄ legem terre Anglie plitari non
debet, Ac eciam p̄ co quod plitum p̄dia'
incertum & caret forma unde p̄ de-
fuit sufficiens Materie in plito p̄dia' su-
perius spec' idem A. pet' Judicium &
dampna sua occōne detentōis debi illi
adiudicari, &c.

In Abatement, the Judgment upon a De-
murrer against the Defendant is a respondeat
Quater; but upon a *Pul tuel Accord*,
which is near related to a Plea in Abatement
upon a *Defecit de Record*, the Judgment is
final; for Trial per Accord is quasi Trial
per Pais.
See afterwards amongst the Judgments in
Abatement.

Note, That in *Turbill's Case*, *Pasc. 19 Car.*
2da Regis, Mr. *Turbill*, an Attorney of the King's
Bench, having covenanted to pay one *Newison*
200 l.

In an inferior
Court.

queret p̄d vel unquam postea non fuit
possessorat de messuagio p̄d cum pertinet
in narr̄ p̄d sup̄ius mentōnat in visum
posse) p̄ hanc Cur' recipi vel admitti non
debet quia die qd̄ ipse p̄fat A. ad Cur'
hic tenet 10 die instantis mensis Junii
narrabit vers̄ p̄d C. in p̄lito p̄dia' A.
quem diem p̄d C. ad morandū respon-
suam in corā p̄lito per licent̄ inde inter-
loquendū & p̄litandū ad Par̄t p̄d usq; p̄
Cur' hic tenendū hoc die scilicet 24 die Junii
Et post moratōem & interlocutōem p̄dia'
C. ad Par̄t p̄dia' in forma p̄dia' p̄lita-
bit (put p̄ Recordū inde in Cur' hic re-
mandū plenius liquet) Et hoc p̄dia' A. p̄-
rat est verificare p̄ Recordū p̄dia' And
per̄ iudicium Cur' si p̄dia' C. post mor-
atōem p̄litatōis & interlocutōis p̄dia'
recipieret̄ seu admittet̄ p̄litare vel dē-
cere ut p̄dictum est Et quod p̄dia' C.
stringat̄ reparare Messuagium p̄dia'
cum pertinet̄ posse in visum p̄dia' C.
qd̄ Dampna & Custaḡ adjudicent̄ p̄-
A. p̄ non reparatōe ejusdem Messu-
gii, &c.

Demurrer to
a Plea in
Abatement
by Privilege
pleaded after
an Impar-
lance.

ff. **E**t p̄dia' A die qd̄ materia in p̄-
p̄d p̄dicti B. sup̄ius spec̄ m̄m
sufficiend̄ in lege existit ad p̄d B. p̄litum
suum p̄d vers̄ ipsum A. hēndū manu-
nendū qd̄q; ipse ad p̄litum p̄dia' modo
forma p̄dia' fac̄ necesse non hēt nec p̄
legem terre tenet̄ respondere, Et
Causis moratōis in lege idem A. C.
hic monstrat qd̄ p̄dia' B. alias s̄
Termino Sed Michis ult̄ p̄terit̄
C.

C. D. Attorū suū Vēd hic in Cur' ad respondendū p̄dia' A. p̄dia' de plito, Et tunc defendebat vim & injuriam quando, &c. Et pet' licenciam inde interloquendi hic usq; hunc diē scilicet in Octab Sed Villarii ad respondendū eidem A. de plito p̄dia', Et hūit, &c. put pater p̄dia' Termino Sed Michis ult p̄terit rotulo s; per quod p̄dia' B. submisit se Jurisdictioni hujus Cur' & tot' aduancoginū & p̄uilegiū p̄dia' p̄ p̄dia' B. sup'ius peti' perdidit & amisit, Ac p̄ eo quod p̄dia' p̄lit' p̄uilegii p̄dia' B. sup'ius p̄litat' post p̄dia' licenciam interloquendi p̄ p̄dia' B. in forma p̄dia' peti' & hit' p̄ legem terre Anglie p̄litari non debet, Ac eciam p̄ eo quod p̄litum p̄dia' est incertum & caret forma unde p̄ de se u sufficiēd Materie in plito p̄dia' sup'ius spec' idem A. pet' Judicium & dampna sua occōne detentōm debi illi ubi adjudicari, &c.

In Abatement, the Judgment upon a Demurrer against the Defendant is a respondeat Ouster; but upon a *Pul tuel Accord*, which is near related to a Plea in Abatement upon a *Defecit de Accordo*, the Judgment is final; for Trial per Accord is quasi Trial per Pais.

See afterwards amongst the Judgments in Abatement.

Note, That in *Turbill's Case*, *Pasc. 19 Car. 2di Regis*, Mr. *Turbill*, an Attorney of the King's Bench, having covenanted to pay one *Newson* 200 l.

200 *l.* upon a Conveyance of Lands to made to him by *Nevison*, free from Incumbrances; which Conveyance *Nevison* afterwards made (tho' the Estate was not free from Incumbrances). Hereupon the Creditors *Nevison* levied Plaints in the Sheriff's Court in *London*, and attached the Money in *Turbet's* Hands, who thereupon brought his Writ of Privilege to supersede the Foreign Attachment, but the Judge would not allow it; the Matter was moved in the *King's-Bench*, where it was ruled, that they should proceed in *London*, notwithstanding several Cases of that customary Actions in *London* have been discharged by Privilege of the *Common-Pleas*. as 38 *H. 6.* 29. *b.* 9 *Ed. 4.* 35. *b.* & 1 *Leon.* 156. & 2 *Leo.* 156. *Lodges* Case, being the same as the Case in Question. For the Court considered (as the Creditor's Counsel alledged) that it was a hard Case, on their Part, if the Privilege should be allowed, for then the Creditors would lose their Debts, and that *Turbet* would only pay that which he had covenanted to pay, and would be discharged against the said *Nevison*, &c. *Vide* 1 *Saund.* 67, 68, 69.

See *Stiles*, in his *Pract. Regist. Tit. Privilege* says that the Prayer of Privilege is not properly a Plea.

Also, that a privileged Person shall not be allowed his Privilege upon a Motion to the Court, but he must appear and plead his Privilege, and upon his Pleading he shall be allowed.

See for more Precedents on this Head, relating to the Person of the Defendant. *Rast.* 178, 472, 473. *Brownl.* 161, 167, 268,

ls to *Hern 3. Thomps. fol. 3. Numb. 18, 21, 22, 23.*
 Incu *1st of Brown. fol. 2. Numb. 8.*

4ly, Abatement for Variance.

Quibus leis & auditis idem Def. dicit quod hze pdia' varians est scripto pdia' eo quod idem Def. in scripto nominatur Thomas D. de Nobis Castri que dictiones (scd de Castri) omissa sunt in hzi pdia' sic hzeve illud non Warrantizatur per Cases dicitur pdia' per quod idem def. per judi- have de hzevi illo, &c.

Variance be-
tween Writ
and Specialty.

See Cl. Mistr' 2, 3. Reg. plitand 278,
 And see for Directions to several Prece-
 at the End of this Division.

Et pdia' Def. p J. R. Attozid suid ven & pet' Judicium de Bzd p- qui dic' quod habetur variantia int' scriptum pdia' hic in Cur' plat' & hzeve original sup codm scripto impetrat' quia dic' quod ipse idm def. p scriptum illud nominat' & vocatur P. D. de S. Et parat' est verificare unde ex quo ha- betur variancia inter hze pdia' & scrip- pdia' sup quo hzeve pdia' impetrat' pet' judic' de hzi illo, &c.

Aliter for Va-
riance be-
tween the
Original and
Specialty.

Note, It's said, that Variance between the
 Bond and the Writ may be pleaded after Im-
 variance in another Term, *Vide postea, & le*
Reason.

For Variance
between the
Original
Writ and De-
claration.

¶ **Q**uibus lectis & auditis idem dicitur per Judicium de brevi ille quod dicitur quod habetur variatio inter breve dicitur & narratur super idem breve declaratur hoc, (viz.) predictum queritur in brevi predictum nominatur per nomen J. W. Et in predictum super brevi illo fundatur eadem queritur nominatur per nomen T. W. Unde ex quo habetur variatio inter breve narratur predictum in nomine ipsius queritur idem defenditur de brevi ille per Judicium, See 2 Mod. Intr. 9. Reg. Plitand 277.

If the Addition of a Yeoman be in Writ, and not in the Count, the Writ abate. 3 H. 6. 23.

It's said, if the Plaintiff is not named Executor in the Latitat or Alias, &c. and declares as Executor, no Variance will lie; but if per Original, quere.

For Variance
between the
Writ and Bill.

¶ **Q**uibus lectis & auditis idem dicitur petit Judicium de brevi predictum quia dicitur quod habetur variatio inter breve predictum & predictam Billam super quod breve predictum impetratum fuit per eundem in predicto brevi super billam illam impetratur predictum Johannes vocatur per nomen Johis Poakes ubi ipse in predicta billa sua prestat Ricum hic in Curia prolatatur per nomen Johis Stoakes hoc, &c. Unde ex quo habetur variatio inter breve predictum & predictam billam quam breve predictum fuit impetratum idem dicitur per Judicium de brevi illo,

Vide 1 Bro. 3. 2 Mod. Intr. 10. Simil int
Querelam & Parr'. Clif. 20. Bro. Red. 1. 2.
Reg Plit 282.

In Debt by Executor.

D Ef. dicit qd' pd' Testator in hzevi
pd' nominatur J. Horne nuper
Kingstown, & in Testamento predicto
nominatur J. Hornesby de Paroch de
Kingston sicque hzeve pdict' varians
est a Testamento pdict' & inde minime
Warrantizatur p quod per Iudicium
in hzevi, &c.

Variance be-
tween the
Writ and Tes-
tament.

See Clerk's Assise. 14. 2 Mod. Intr. 11.
Reg Plit 280.

Executor in a Count in Quare Impedit
or Disturbance in the Life of his Testator,
concludes in *Nunc retardatō Executō*
Testi; and upon a Plea in Abatement for that
cause, the Writ was abated upon Demurrer.
Lut. 3. See after.

Note, That after Imparlance, Variance be-
tween the Testament or Letters of Admini-
stration shall not be pleaded, because the Te-
stament is only one Time shewn to the Court;
but it is otherwise of a Bond, for that always
remains in Court, and therefore Variance be-
tween the Bond and Writ, may be pleaded
after Imparlance in another Term. 36 H. 6.
33. 38 H. 6. 2. 19 H. 6. 7.

But it is said, that after Imparlance one may
demand Oyer of a Testament, nor of
D other

other Deeds and Obligations. 22 H. 6. 38.
 & 37 H. 6. 16. 38 H. 6. 1, 2.

Yet this seems to be mistaken, for the Practice is otherwise.

And the 4 H. 7. fol. 12. says, that if a Man in Debt upon an Obligation imparles before he demands Hearing of the Obligation and Condition, and hath that entred, he cannot plead the Condition afterwards, for he shall not have Hearing of that, if he do not alledge Variance.

And it is the Practice of the *Common-Pleas*, when they deliver Declarations upon Bonds, after *Et inde pducit Sextam, &c.* to write thus, *Et pducit B. p C. D. Attoꝝ suu veni & defendi vim & injur quando, &c. Et per auditum scripti obligatoꝝii pducit Et ei legitur, &c. Per etiam auditum condicoꝝ ejusdem scripti, Et ei legitur in hec verba, ff. The Condition of this Obligation is such, &c. and to set forth the Condition, Quibus legis & auditis idem B. per licenciam inde interloquendi hinc usq; Cró Sed Trin, Et habet, &c. idem dies dat est p̄fat N. hic, &c.*

Oyer.

And in *Stiles Pract. Reg.* which relates to the *King's-Bench*, *Tit. Oyer*, it is said, That if one be sued upon an Obligation, he may pray Oyer of the Obligation; and before he hath Oyer of it, he is not bound to plead to the Plaintiff's Declaration; yet he may plead without Oyer if he please, but then he cannot afterwards waive his Plea, and demand Oyer. And he says also, to have Oyer, is not only to have a Sight and Hearing, but to have a Copy

also, that the Defendant may know what to plead.

And Lane says in his Reports, That in the Common Pleas, if one plead a Writing, and the Party do not demand Oyer the same Term, he may not have it in another Term, but in the King's-Bench he may. Lane 39.

ET p̄d quer̄ dic̄ quod p̄d def. va-
rianc̄ int̄ breve p̄d & testament
p̄d hic in Cur̄ plat̄ p̄litare admitti non
debet quia dic̄ quod idem quer̄ alias
fuit Term̄ Pasche anno Regni Domini
Regis nunc 7 versus p̄d̄ def. super
breve p̄d̄ in forma p̄d̄ in Cur̄ hic
narrabit ad quam quidm̄ narratōnem
suam ut p̄fert̄ fact̄ p̄d̄ def. in eadem
Cur̄ hic petit̄ licenciam inde interlo-
cūdi hic usq̄ ad hunc diem scilicet in
rō Scd̄ Trin̄ ad respond̄ eidem quer̄
p̄lito p̄d̄, Et habuit, &c. put̄ pa-
t̄ p̄d̄ Termino Pasche Anno 7 supra-
dicto rō 26. Et hoc parat̄ est verificare
unde petit̄ Judic̄ si p̄d̄ def. ad p̄litum
varianc̄ inter bre & testamentum p̄d̄
admittit debeat, &c.

Repl.
To Variance
pleaded in
Abatement
after Impar-
lance, inter
Breve & Te-
stament.

Note, That it's said, that in Debt by an Executor after Imparlance, the Defendant shall not have Oyer of the Testament the second Term; but 'tis otherwise of Letters of Administration. 16 Ed. 4. 8.

Oyer of the
Letters Te-
stamentary
and Admini-
stration.

Also if one plead a Demise to a Stranger, the other Party, against whom the Demise is pleaded, may not have Oyer of the Testament,

because it does not pertain to him that pleads it, but to a Stranger. *Vide* 3 H. 6. 46.

As to Oyer of Deeds, it is further said, that if a Deed be of Record in Court, one shall not have Oyer of that Deed in the same Court. 9 H. 7. 17. 7 Ed. 4. 18.

But by the 5 H. 7. 24. it is said, that a Party to the Record shall have Oyer of it in the same Court, because he cannot traverse it; otherwise it is, if it be in another Court. See 5 Co. 74. e.

By 22 H. 6. 38. He that is Party to a Record shall not have Oyer of it when the Record is pleaded by Way of Bar, but 'tis otherwise where the Record is to be executed against him.

Mod. Reports, fol. 69. Upon a Motion for Time to plead in a great Cause about Brand Twisden said, if it be in Bar, you cannot command Oyer of the Letters Patents the next Term; but if it be in a *Replication* you may, because you mention the precedent Term in the Bar, but not in the Replication.

It's said, that in Debt upon Arrearages of Annuity, after Impar lance the Defendant cannot have Hearing of the Deed; but otherwise if the Defendant plead that it was made in another County than where the Writ was brought. 39 H. 6. 17.

20 Ed. 4. 9. Says, that in Debt upon a Lease of a *Corodie*, the Defendant may have Hearing of the Deed after Impar lance.

In Debt upon an Administrator.

Def. per iudicium de brevi Quia
die qđ in Literis Oficial pđia'
continetur quod Administratio omnium
bonorum & catallorum A. B. alias D. pre-
quer commissus fuit, Et in brevi pđ'
omissio pđ' verb (als D.) per quod p
pđia' non exprimitur quin pđia'
B. in brevi pđ' nominat, Et pđ' A. B.
D. in pđia' Literis nominat diverse
sunt esse plone, Unde per Iudicium
brevi pđia', &c. — Iudic qđ breve
setur.

For Variance
between the
Letters of
Administra-
tion and
Writ.

Upon an Ori-
ginal.

Vide 2 Mod. Intr. 44.

See after for Judgment.

Et pđia' def. p J. R. Attorn suum
venit & per auditum Brevis Ori-
ginalis, Et ei legitur in hec verba [re-
the Original] Quo lco & audito per
iudicium de Brevis illo quia die Qđ
breve illud non concordat cum forma
brevis in Registro in huiusmodi Casu
& pđis Quia die quod idem Brevis
et hoc verba (injuste) Et hoc, &c.

For Variance
between the
Writ and the
Register.

Et pđia' def. p P. C. Attorn suum
venit & per auditum Brevis Ori-
ginalis pđ' quer', Et ei legitur in hec
verba (lier, &c.) Quo lecto & audito
idem def. per Iudicium de brevis pđia'
Quia die quod breve illud malum & vi-
tiosum existit & non impetrat versus

Aliter.

cund' def. scdm' cursum & formam Regi-
stri & Breuium Originalium in hac pte
provis Quia dicit qd' idem hze impetrat
est p' hec verba sequen', viz. p'ec' C. S.
quod iuste & sine dilacōne reddat J. S.
unum Messuag' & dimidium virgat' terre
cum p'tin' in P. Ubi scdm' cursum &
formam Registri p'dia' terra petetur p'
certitudinem acraz terre & non p' inco-
titudinem virgat' terre put hze illud
impetratur Et hoc parat' est verificari
Unde ex quo hzebe illud in forma p'dia'
impetrat vitiosum existit Idem def. p'
Iudicium de hzebi ille, &c.

For Variance, Int' hze de Crig' fac'
Narr' in nomine Def. 1 Brown. 4. 2 Mo
Int. 10. Reg' p'lit' tit. 276.

See for Precedents on this Division, *Hern*
Aston 3, 4, 5. *Rast.* 459. 1st of *Brown.* fol.
numb. 14. fol. 4. numb. 22. fol. 7. numb.
Bro. Rediviv. fol. 2. numb. 6. &c.

sly. By Abatement for Default in the W
and the Action being ill founded, &c.

After Oyer: ff. **Q**uibus lectis & audit' idem d
For that the Writ and Narr' are not warranted by the Writing or Specialty. pet' Iudicium de hzebi & nar-
tione p'dia' quia dicit qd' p'd' quer'
hzebe & narr' sua p'd' superius supp'
qd' idem def. debet p'efat' quer' quing-
tas libras quas idem def. redderet
revera non habetur aliquod tale verbum
in scripto p'dia' continens & Narrat'
zans hoc verbum in hzebi & narr' p'd'
specificat videlt' quingentas Sed in

dem scripto obligatorio hec duo verba
videlicet quinq; genta sunt scripti & content
que quidem duo verba quinq; genta
nullam habent in se significationem de
aliqua summa certa sicq; brebe & narra-
tio p̄dicta non warrantizantur de &
p̄ scripto p̄dicto p̄ p̄fat quer hic in Cur
lat p̄ quod idem def. per Iudicium de
rebi & narratō p̄dicta, &c.

And so of the
Words Offo-
genta for
Offingentas.

Vid. 2 Mod. Intr. 10. 17. Reg Plit 279.
10. Red. 191.

Judgment for the Defendant with Costs.
Vide postea for Judgments.

Et p̄dicta def. p̄ J. L. Attoꝝ suum
ven & defend vim & injur quan-
, &c. Et petit Iudicium de Bill p̄-
dicta quia dicit quod p̄ H. H. p̄ ult vo-
ntatem suam ordinabit & constituit
vendam G. W. Executoꝝ testamenti
p̄dicta simulcum p̄fat def. & obiit qui
idem G. W. apud D. in Com p̄dicta
ministrabit bona & catalla que fuer
dicta H. H. cum p̄fat def. Unde ex quo
at G. W. in Billa p̄dicta non nomi-
atur Idem def. petit Iudicium de Bil-
p̄dicta Et quod Billa illa cassetur, &c.

For that ano-
ther Executor
who admini-
stred is not
named.

Assari non debet quia dicit quod p̄-
dicta G. W. post mortem p̄dicta testa-
tis aliqua bona seu catalla que fuer
idem testatoꝝ tempore mortis sue
Executoꝝ ipsius testatoꝝis nunquam
ministrabit Et hoc petit quod inquit

Repl. That
the other ne-
ver admini-
stred.

Issue.

ratur per Patriam, &c. Et p̄dia' det.
silit, &c.

Vide Thomp. 1. & Hans. 102. Rob. 229.

See 1 Lut. 696, &c. Plea in Abatement, that
the other Two named in the Bond, as well as
the Defendant, bound themselves jointly.

Aliter, For that there is another Executor
not named.

N Quando, &c. Et die q̄d p̄d A. B. in
vita sua apud L. in Com S. con-
didit testamentum & ultimam volunta-
tem sua in scriptis & constituit & ordi-
navit in eisdem ipsum C. & quendam
E. f. Executores ejusdem Testamenti
Et postea idem A. B. testator ibid obijt
post cujus mortem idem C. ut Execut
testament ipsius A. ibidem administra-
vit diversa Bona & Catalla que fuer
ejusdem A. tempore mortis sue qui quid-
dm E. adhuc supstes & in plena vita
exisit videlt apud L. p̄dia' Et hoc (&c.)
Unde ex quo p̄dia' E. non nominatur in
h̄ebi p̄dia' idem C. petit judicium de
h̄ebi illo, &c.

*Repl. Quod te-
stator non con-
stituit al' Exe-
cutor.*

E T p̄dia' J. die quod h̄ebe suum p̄d
ratione p̄allegat cassari non debet
quia die quod p̄dia' testator non consti-
tuit p̄dia' E. executod testamenti p̄dia'
p̄aut p̄dia' C. superius allegabit Et hoc
p̄t quod inquiratur & p̄riam Et p̄dia'
C. silit, &c. Ideo, &c.

Vide 1 Bro 4. Plit Gen 11, 12. 2 Mod
Int. 18. Quod Testator fec def, & al' Exe-
cut

non nominat in Breui Repl quod
non nominat obiit ante Orig proz,
15. Bro. Red. 199.

Et petit Iudicium de Villa pdia'
quia dicit quod post mortem
J. R. scilt (tali die & anno) apud,
Administratio omnium & singu-
honor & catalloz jurium & creditor
fuer' pdia' J. R. tempore mortis sue
ministrand' pfat def. & cuidam E. R.
pdia' J. R. p (Ec.) commissa fuit
quidem E. adhuc in plena vita exi-
videt apud R. pdia' in Com pdia'
ex quo pdia' E. R. non nominatur
villa pdia' Et quod villa illa casse-
(Ec.)

For that ano-
ther Admini-
strator is not
named.

vide Clif. 15, 16. Wit Gen. 2, 3, 6, 337.
Mod. Intr. 18.

For that one of the Obligors is not named
in the Writ.

Def. per Iudicium de breui pdia'
quia dic qd ipse pdia' def. simul-
cum quodam J. S. de, Ec. (tali die &
anno supradia') tenet & obligat fuer' p-
A. B. p pdia' Scriptum Obligato-
in pdia' 80l. solvend' eidem quer'
inde requisit' essent Et ad eandem
tionem pdia' def. & J. S. obligave-
se per idem scriptum prout per
ptum pdia' hic in Cur' prolat' plene
paret Et idem def. dic qd ipse non
ligabit seipsum seperatim sine pdia'
S. sed conjunctim cum pfat J. S.
pfat

pfat A. B. per pdia' scripte obi Et
idem J. S. in billa pdia' non nomi-
tur idem def. petit iudicium de billa
dia' Et quod billa ille cassetur, &c.

Vid. Clift. 4. 7. 2 Mod. Intr. 17.

For that ano-
ther of the
Obligor's
Heirs is not
named with
the Defen-
dant.

ff. **E**t pdictus A. B. p (Ec.) Attor-
suum veni & dicit qd pdia' J.
habuit exitum pdictam Elizabetham
quandam Mariam filias & cohered
que quidem Maria cepit in Virum
quendam C. S. gen & iidem C. &
huer' exitum inter eos R. S. post
dumq; pdicta Maria apud W. pd' ob
qui quidem R. est heres pdia' M.
idem R. adhuc superstes & in plena
existit videt apud W. pd' versus qu
quidem R. simulcum eodem A. B. pd
Elizabetha acconem suam pdictam
lisse debuit & hoc parat est veriffe
Unde ex quo pdia' R. non nomina
in billa pdicta Idem A. B. petit
dicium de eadem billa & qd billa
cassetur, &c.

Vid. Thomp. 9. vid. 1 Bro. 170. Nomi-
heres de H. tantum ubi foret filius
heres H. & A. uxor ejus.

For that the
Defendants,
as Executors,
have no Ad-
ditions.

ff. **E**t pdicta' A. B. C. D. & E. &
(Ec.) veni & petunt iudicium
h'd pdicta' quia dicunt qd appare
h'd pdictum quod iidem A. C. &
sunt & die impetraconis h'is pdicti
runt Executores Testamenti pdia'
C. p quod h'd pdia' in hoc casu im-
trari debeat p pdicto querente in
for

Et quia sequenti videlicet Precipe A. B.
 er de L. in Com pdia' Armig C. D.
 er de P. in Com pdia' Gen & C. F.
 er de M. in Com pdia' Neom Cre-
 quibus testamenti M. C. Gen nuper
 M. C. Gen & non in eadem forma
 impetrat existit Et hoc parati sunt
 ficare Unde pet' judic de brevi pre-
 Ec.

T pō Def. p J. S. Attornd suum
 ben & petit Judicium de brevi
 quia dic' quod brebe illud vitiosum
 in se & non impetrat Usus eundem
 secundum cursum Registri seu secun-
 a formam & naturam brevis Und
 is de Cōlgr' Quia in eodem brevi
 aret qđ hec verba sequen' sunt videt
 ensur' quare vi & armis clausum ip-
 T. apud P. fregit & herbam suam
 balenciam decem libzarum ibm nup
 cend' pedibus ambulando conculeabit
 consumpsit & averia sua ibm inveni-
 it & ad loca ignot' fugabit ut dic' ubi
 andum formam & cursum Registri &
 uram ejusdem bzis brebe illud esset
 hec verba Offensur' quare Vi & Ar-
 s clausum ipsius T. apud P. fregit &
 bam suam ad balenciam decem li-
 z ibm nup crescend' pedibus ambu-
 do conculeabit & consumpsit ac cer-
 a numerum equor' bobum vel ovium
 s nominando specialiter) & non pre-
 a verba generalia videlicet averia
 it & ad loca ignota fugabit, Ec.
 de ex quo brebe illud in forma pdia
 im-

For that the
 Writ in Tres-
 pass is not ac-
 cording to
 the Register.
Vide postea.

impetrat vitiosum est idem R. per
 dictum de brevi illo & quod idem bre-
 cassetur, &c. Vide Rob. Ent. 1.

For that the
 Writ pre-
 cedes the Day
 of Payment.

ff. **E**t predicta Def. p. (&c.) veni &
 fens vini & injur quando, &c.
 petit auditum brevis Originalis per
 Leonard Et ei legitur in hec ver-
 ff. Wilhelms tertius Dei gra (&c.) [re-
 tandi totum bre] Quo leao & audi-
 idem Def. dicit quod predicta Leonardus per
 confectorem Wille predicta & ante predictum
 vicesimum primum diem Novembris
 eadem billa superius specificat bre sum-
 predictum de debito predicto versus
 Def. impetrabit Et hoc parat est ver-
 ficare unde petit iudicium de brevi illo
 &c.

Aliter.

ff. **Q**uibus leatis & auditis idem
 petit auditum predicti brevis Orig-
 nalis unde predictus Quer superius na-
 rabit & ei legitur in hec verba Rex,
 [Recitando totum breve] quibus lea-
 & auditis idem Def. petit iudicium
 brevi predicto quia dicit quod ante predictum
 festum Annunciationis bre Marie Vir-
 nis in Indorsamento predicta superius
 specificatum predicta H. tulit bre sum-
 Originale versus eundem Def. de debi-
 predicto Et hoc parat est verificare unde
 petit iudicium de brevi illo, &c.

Vide plit Gen 246. & in Bro. 1. B.
 Red. 259.

Note, That when the Writ bears Teste
 fore the Action accrued, it abates de facto

Default in the Original, *Anderson* 1. 241. 2. 96.

Rast. Ent. 459. *Co. Ent.* 624.

Quod breve impetrat fuit ante cau-
sa Alionis. *Clif.* 10. 19.

Et quod breve impetrat ante diem
Comparentie. *Clif.* 18.

Et quod Administratio concessa fuit
et non Def. *Clerk's Assist.* 105.

Et quod A. fecit T. et unum W. Exec. et
Travers quod A. obiit Intestat. *Bro.*
465. *Thompl.* 140.

Et quod S. obiit Intestat et Admini-
stratio fuit Commissa Def. Repl. quod S.
Def. Exec. et Travers quod S. obiit
Intestat. *Clif.* 15, 16. *Pl. Gen.* 2, 3, 6.

Et post Sequestracionem factam per Oyer
de bonis Intestat. *Pl. Gen.* 12.

Et quod Testator die Exhibicionis Ville
in vita, Repl. quod obiit ante diem.
Gen. 336. *Hans* 107. *Travers* Repli-
cationem et Issue inde. *Vide* 1 *Lut.* 13. Et re-
spondet ouster agardum per unum Fault in the
Bill. *Sile* idem 16.

Et quod Testator fecit querere et alii Exec.
Travers quod querere est solus Exec.
et quod Testator fecit querere solum Exec.
Red. 200.

Et quod T. obiit Intestat et Admini-
stratio commissa fuit A. et Travers quod
est Exec. seu administrabit ut Exec.
Thompl. 221.

Vide 2 *Lut.* 1642, &c. Debt upon a Bond
and 27 *Apr.* 2 *Annæ Regin.* After Oyer of the
Original which was tested the First of April
the same Year, Defendant pleads in Abate-
ment that the Writ was brought before the
Date

Date of the Bond; *Repl.* That the Writ which he declared was another Writ, which is entred in *hec verba*, and bear *Teste* after Date of the Bond; Rejoinder by Way *Estoppel* for the aforesaid Reason of Oyer; Demurrer with a Conclusion, as if the Plea had been a Bar, and Judgment for the Plaintiff.

In Debt against an Administrator, he pleads that *W.* is Administrator *duram* *minorem* Et *Demurr* inde Et *respondi* ouster against for Default of the Averment, Et hoc par est verificare, 1 *Lut.* 20, &c.

See 1 *Lut.* 29. Upon a Promise against an Executor, he pleads, that he is Administrator by Letters granted by the D. of *Canterbury* but adjudged ill upon Demurrer, because it was not said that the Intestate had bona tabilia. *Vide postea.*

Et quod *J.* obiit Intestat & Administratio commissa fuit Def. Repl. quod Def. an Admin commissus Administrabit bona Exec & Judic pro quer. 2 *Ventr.* 178.

Et quod *M.* obiit Intestat & quod Def. ceper literas Admin defuncti & sic Admin implitari debuer. *Hans. Ent.* 66.

Adminr plicitat quod h2e Admin per ipsum obtent revocat fuer. *Thomps.* 221.

Debt against an Administrator; After Oyer of the Writ, the Defendant pleads that the Writ bears *Teste* before the Letters of Administration, and allow'd a good Plea upon Demurrer. 1 *Lut.* 8, 9. simile id 16. Et *Judic* quod h2e cassetur quia apparebit quod h2e *Testat* ante *Argent* fuit *lubit*.

quod pars nominat in b[e]d qui non
 lavit Indentur. Clif. 4.
 quia Participes non nominantur in
 Clif. 8.
 quod Patronus non nominat in
 cum Def. Demur inde & nolle p[er]
 per Attoz[n] General. Bro. Red. 410.
 23. 3 Lev. Rep. 15. simile 2 Lut. 1088.
 quod sunt al[ia] Certenen non nomi-
 2 Ventr. 103.
 Ven fa ad p[er] p[er] Et Ven fa de
 agard, eo quod precept[um] fuit Vie
 ubi Exit triari debet per hom[ine]m de
 I. 1 Bro. 2.
 insufficienti retor[n] Original. 2 Mod.
 ad. 12.
 quod non apparet per retor[n] h[ab]is quod
 inven[ire] vie p[er] p[ro]p[ri]os. Rob. Ent. fo. 1.
 quod breve retor[n] fuit p[er] nup[er] vie ubi
 debet p[er] nunc vie. 1 Bro. 3. Cl.
 quia vie non habuit sufficienti autho-
 retor[n]andi. Clif. 5.
 quia h[ab]e de Scir fac non dirigitur
 Com ubi est Record[um] Judic[is]. Idem 11.
 quod breve foret scdm Cons Regni
 Anglie, 1 Bro. 1. Hans. 103. Et non
 Legem D[omi]ni P. & D[omi]ne M. Regis
 gine Anglie.
 quod nomen Hr[is] anteponit nomini
 in descensu, Reg. p[ro]p[ri]a. 289. Clerk's
 Et
 quod in trans certus numerus
 non nominat. 1 Bro. 1.
 quod precept[um] fuit quod accederet
 Manerii.

Et

Et non ad Cur' Dñi Reg' Maner
i Bro. 7. Vide Abatement in Formedon
und his petir. i Lut. 851, &c.

In Debt in B. R. by Baron & Feme,
ministratrix de bonis non, &c. against
Executor. After a special Imparlance, De-
dant pleads that such a Day Administra-
tion was committed to her by the Vicar-General
and Official of the Bishop of D. &c. De-
rer thereupon, and Judgment against the
fendant, because she had not traversed,
she had not administered before the Letters
Administration were granted. i Lut. 890.

For that there
issued not
forth a *Ca. Sa.*
before the
Scire Fac.
against the
Bail in B. R.

ff. **E**t pñia' A. B. & C. D. pñia'
Attorn suū veni & petunt In
de hzevi de Scd fac pñia' quia dic
post reddicon Judicii pñia' versus
C. f. in forma pñia' hic & ante em
con hzis de Scd fac pñia' vsus pñia'
A. B. & C. D. nullum hzeve de Ca
ad satisfaciend de & sup Judic ill
pñia' J. S. vsus pñia' C. f. de bo
do pñia' & retornat fuit quod secun
cons Cur' fieri debuisset anteqm ali
hzeve de Scire fac vers pñia' A. B.
C. D. emanasse debuit Et hoc pñia'
sunt verificare Unde per Judicium
qd hzeve de Scd fac pñia' cassetur.

Repl.

Et pñia' J. S. dic qd p aliqua
pñia' A. B. & C. D. in forma pñia'
allegat hzeve de Scd fac pñia' cassari
debet quia dic quod post reddicon
dicii pñia' vsus pñia' C. f. in forma
pñia' hic & ante emanacionem pñia'

de Sed fac vers' p'fat' N. B. & C. D.
 (t'li die & anno the Day of the Teste of
 the Capias) p'ced' J. S. & Cur' d'ed d'nd Re-
 coram ipso Rege apud Westm' p'se-
 fuit quoddam breve de Capias ad
 satisfaciend' vsus p'dia' E. f. tunc Die
 directa' p' quod quidam breve d'cus d'nus
 eisdem tunc Die London' p'cepit q'd
 eret p'dia' E. f. si invent' fuisset in
 illa sua & cum salvo custod' ita q'd he-
 t corpus ejus coram d'co d'no Rege
 ad Westm' die (&c.) ad satisfac' p'fat'
 S. de C. l. necnon 10 l. que p'd' J. S.
 Cur' dia' d'nd Regis coram ipso Rege
 ad Westm' sustinuit tam or'one deten-
 debi ill' q'm p' mis & custag' suis p'
 circa sextam suam in ea parte ap-
 unde p'dia' E. f. convia' fuit put
 abbat de Recordo Et q'd p'd' Die L.
 vsus p'ent ibi tunc breve ill' quod quidam b're
 Capias ad satisfaciend' de & super
 die ill' p' p'dia' J. S. vsus p'dia'
 f. de'o modo p'secut' fuit Et ante re-
 ejusdem brevis p'fat' Die L. de'ba
 deliberat' fuit super quo p'd' J. S.
 p'fat' retoz'd' ejusdem brevis ven' in
 persona sua Et tunc Die L. videte
 C. Mil & R. G. Mil ad diem ill' re-
 quod p'dia' E. f. non fuit invent' in
 illa sua put p' p'dia' breve de Ca Sa
 retoz'd' inde in eadem Cur' dia' d'nd
 is coram ipso Rege apud Westm' de
 ordo remanend' afflat' plenius liquet
 apparet Et hoc parat' est verificare
 p'dia' J. S. p'et' execu'onem p'dia'
 & dampnis p'dia' in forma p'd' de
 E recogn

recogni p̄textu recognicionē p̄dicta sibi
judicari, &c.

For that the
Original was
purchased be-
fore the Time
of the Tres-
pass.

¶ **E**t p̄dicti A. B. & C. D. p̄ J. A. Attorū suū veni & defendi
& injuriā quādo, &c. Et petunt a-
dictū huius Originalis p̄dicti & ei legi-
tur in hec verba, Willus tertius (Et
[Et sic recita tot huius]) Quibus lectis
auditis iidem A. & C. petunt iudiciū
de huius illo quia dicunt quod p̄dicti
G. ante p̄dictū tempus transgre-
facte scilicet primo die Septembris
narratione p̄dicta superius specificata
huius suū Originale de transgressione
p̄dicta huius cum impetrabit, Et hoc (Et
Unde per iudicē de huius illo, &c. 2 M.
Intr. 15. Clif. 19. & 1 Bro. 4.

Et quod Baron & femine tulerunt
ante Matrimonium inter eos celebra-
tum quod fuerit maritatus ante Originem p̄dicti
1 Bro. 4.

For that the
Plaintiff be-
ing an Infant,
has declared
by his Attor-
ney.

¶ **E**t p̄dictus Def' p̄ (Et,) Et p̄
Judiciū de Narratione p̄dicta
quia dicit quod p̄dictus H. infra etatem
viginti & unius annorum jam existit
delicet sexdecim annorum & amplius,
quod p̄stat' H. p̄ J. B. Attorū suū
Cur' hic in p̄dicto plito narrabit ut
legem terre idem H. p̄ primum an-
cum suū in Cur' hic admissum
rasse debuit, Et hoc parat' est veni-
care unde ex quo p̄dictus H. infra etatem
existens p̄ J. B. Attorū suū
plito illo in p̄dicta Cur' narrabit idem

*Def petit Judicium de Narrasione
pedita, &c.*

Vide 1 Brown. 2 Bro. Red. 466, 477.
2 Sand. 209. Clift. 11.

Note, An Infant Plaintiff ought to sue by
his next Friend or Guardian; and an Infant
Defendant must appear by his Guardian,
1 Co. 161. Hutt. 92. unless he sue *in auter
loco*, as Executor.

The Defendant pleaded in Abatement to
an *Assumpsit* brought by several Executors
(*to wit*).

That Two of the Executors were under
the Age of Seventeen Years, and prayed
Judgment of the Bill: Plaintiffs demur, and
were here resolved,

That the Action was well brought, and
that the Case, *Yelv.* 130. where the Action
was brought by Bill, by an Executor which
had proved the Will.

And the Defendant pleaded, That there
was no other Executor alive, not named in

The Plaintiff averr'd, That the other Exe-
cutor was within the Age of Seventeen Years;
because he was not named in the Bill, it
was void by Judgment.

It was also resolved, That where some of
the Executors are of full Age, and some with-
out, those of full Age may make an Ar-
ravit for those within Age: And that in
Yelv. 541. an Infant Executor by Attor-
ney recovered, and in Error Judgment affirm-
ed.

And in this Case, because the Defen-

dants Plea was in Abatement, a *Respondens*
Ouster was awarded. *Vide 2d Part of Saund.*
fol. 212, 213. Vide Postea.

Note, An Infant Executor ought to appear by his Guardian. 3 Buft. 180. Bridgm. 74, 75.

If an Infant appear by Guardian, and in
parls to the next Term, yet he shall have
Age, 31 E. 4. 78.

Note, That after Imparlance one may plead, That he was Administrator, and Executor; but he may plead by Way of *Bar*. *Quod nunquam fuit Executor, nunquam administravit ut Executor*. &c. because that such Plea comes to the Bar of the Action, and not to the Writ, 32 H. 6. 35 H. 6. 36, 37. 22 Ed. 4. 36.

Also after Imparlanche one is estopped
to say, That he is Heir, (being charged in
as Son and Heir:) So to say, That he is
Bastard; and the same is of Outlawry,
pledged in Disability of the Person. But
may have all Pleas in Bar, 35 H. 6. 36.

**For that the
Property of
the Goods is
not in the
Plaintiff.**

II. **E**t petit Iudicium de Narrat
p̄dicta, Quia dicit qđ p̄p̄
honorum & catallorū p̄dict' tempore
tōnis eorundem fuit cuidam C. p̄
ip̄ius defendi, Absq; hoc quod p̄p̄
honorum & catallorum illorū p̄
tempore captōn eorundem fuit
Quer' put ipsi per Narratōnem
p̄dict' superius supposuer, Et hoc,
Unde pet' Iudicium de Narr, &c.

Vide Bro. Red. 2. In Neplevin p
 & Ur' Barr, Quod ppictas bono

virum tantum. Clerk's Assist. 9. Reg. placit. 292. 2 Mod. Int. 17.

Note, That in Possessory Actions, where the Property does not come in Question, *Nul property* is no Plea: As in Trespass for taking of Goods, *Nul property* is no Plea; because the Possession is sufficient to maintain the Action. But 'tis otherwise in a Replevin; because the Possession cannot maintain such Action without he had Property in the Goods, 20 H. 6. 18.

Et p̄dict' C. C. per Attornd suum Property in
venit & defendit vim & injuriam quan- a Stranger
to, &c. Et per' Judic' de brevi p̄dict' pleaded.
quia dicit quod p̄prietas p̄dicta trium Aliter.
vaccarum in Barr' p̄dicta' superius
specificat' p̄dicto tempore quo, &c. fuit
quidam C. D. Absq; hoc quod p̄prietas
vaccarum eodem tempore quo, &c.
fuit p̄fatus C. F. put per breve p̄dicta'
superius supponitur, Et hoc parat' est
verificare, Unde per' Judic' de brevi
p̄dicto, &c.

Note, In Replevin, *North versus Wildman,*
Quare cepit averia.

Defendant pleads in Bar, That the Property
of the Goods were in him, and not in the
Plaintiff.

Plaintiff Demurs, because it ought to be
pleaded in Abatement.

Defendant joins in Demurrer; and Judgment
for the Defendant; because it may be
pleaded either Way.

E ;

Quod

Quod Empio fact' fuit per Det
alium qui non nominatur in b're
Vide 1 Bro. 8. Hans. 102.

Vide Quod post empion honoz De
fens fec' Script' Obl' p' secur' solutio
venar', Repl' quod non fec', Hans. 104.

For that there
is no such
Will in the
Register.

Et p'cedens C. S. quando, et
Et petit Iudicium de b're p'
dicto quia dicit qd b're illud malum
tiosum existit & non impetratur versus
ipsum C. secundum cursum & formam
Registri b'revium Originalium in hac
parte p'bis quia dicit qd idem b're in
petratum est p' hec verba sequentia
best' p'cipe C. S. quod iuste & su
dione redderet p. M. duo Mesuagii
& sex Virgatas terre cum pertinenti
M. ubi secundum cursum & formam Re
gistri p'cedia' terra peteretur p' certum
vinum acrarum terre & non per certum
vinum Virgat' terre put' p' b're illud
impetratur. Et hoc, (Et.) Unde et
quo b're illud in form' p'dicta impetrat
tiosum est idem C. petit Iudicium
de b're illo, Et.

Vide Rob Ent. 1. And see more at the End
of this Division. Et Vide 1 Bro. 1. Quia
in Ingressu pomar' ponitur in b're
contra formam Registri scilicet de terra
petit' p' dimidium Virgat' terre. Clerk
Ass. 8. 1 Bro. 3.

Vide Verbum (per) omis' in b're
Iudic' inde, Cl. Ass. 2. Reg. placit. 10
In ingressu qd Tenens ei desore, et
omis'

omissa sunt in brevi. 2 Mod. Int. 12.
Cl. Ass. 14. See Vidian 90.

Et predicta' E. & L. p. C. H. At- For false La-
torum suum veni & defend Jus tin, super Bra-
suum quando, &c. Et dic qd breve pre- ve de ingressu.
dicta' vitiosum est in se & non impetratur
secundum cursum Registri eo qd predicta'
W. p. bre suum pdicta' pet' vers' pdicta' E.
& L. unum messuagium quod quidem
verbum messuagium est proorsus insen-
sibile & nullam habet significacionem
& per formam Registri debuit esse
messuagium, Quod hoc verbum reddat
in h'd pdicta' pr' post dilacionem est in-
congruum latinum & debuit esse red-
dant, Quod (&c.) insertum in h'ri pre-
dicta' int' Annu Regni nrd & duodeci-
mo est inutilis addico h'd pdicta' & non
detur in forma brevis in Registro in
quod casu edit' & pvis, Unde ex
quo breve predicta' in forma pdicta' im-
petrat' vitiosum est pdicta' E. & L. pet'
Iudicium de brevi pdicta', Et quod breve
dicta' cassetur, &c.

Et pdicta' W. p. dicta' Attorū suum dic Repl' & De-
mod p aliqua p pstat' E. & L. in cassa- murr'.
ad brevis pdicta' superius placitando
allegat' predicta' breve ipsius W. cassari
non debet quia dic quod placitum pdicta'
modo & forma pdicta' pstat' & materia
eodem content' minus sufficiens in lege
fuit ad quod ipd necesse non het nec
legem terre tenetur respondere, Et
sic parat' est verificare, Unde pet' Ju-
diciū,
E 4

dicium, Et qđ hđ suđ pđ bonum adju
dicetur, &c.

Joinder.

Tenentes jung in mozae: Et Respon
Ouster de novo agard, Judic super
inde pro Petend.

Et super breve de Error p Tenend
ter at fuit argue, That the Original W
was ill, for the aforesaid Exceptions take
against it. And the 18 Ed. 2. *Affize* 375. w
cited, where a Writ was debet & solet,
debent & solent, and was therefore abate
which was the same Case with this reddat
reddant, 27 H. 6. 2. 6. A Writ of Aff
was abated for the Omission of the Wo
[tunc].

So 9 H. 7. 16. 6. Habeas ibi hos bre
pro hoc breve, made the Writ vicious; &
non alioratur, for p Cur', is amendat
by the Statute of 8 H. 6. cap. 12. Vide 2 Sam
Rep. 38, 39, &c.

Vide Clerk's Aff. 2, 3, 14. Reg. placit. 2
2 Mo. Intr. 11, 12.

A. B. versus C. D.

For that there
are not 15
Days between
the Teste and
Return of the
Original,

ET modo ad hunc diem (scilicet
Retornū Annū Regis, (&c.) veni
pdiat' A. per C. f. Attozū suū
pdiat' Def' per G. H. Attozū suū,
super hoc idem Def' die qđ satis
quet p breve Original inde impetra
qđ breve illud gerit dat' apud West
23 die Janū Anno diat' Dñi Regis nū
7 quod quidm breve retornabile &
tozū fuit hic in prefat' Crast' Pur' in
qua

quem quidam vicesimum tertium diem Januarii & p̄dia Cr̄m Purificac̄ sunt nisi duodecim dies in quo Casu p̄dia h̄be de dat' p̄dia hic Retor̄n non est sufficiens in lege ad ipsum Defend̄ in placito p̄dia ponendū respons̄, Et hoc parat' est verificare per h̄be p̄dia hic ad hunc Cr̄m Pur' retor̄n — Defend̄ pet' licet querendū melius h̄be.

See for more Precedents on this Division, *Rast. Ent.* 49. *Co. Ent.* 320. *Hern* 7. 464. *Ass.* 5, 6. 322. *Thomps.* fol. 1. numb. 9. fol. 9. numb. 36. 1 *Brown.* numb. 1, 2, 3, 4. fol. 3. numb. 15, 16. fol. 4. numb. 1, 2, &c.

See also Division the 12th, for that the Action is ill founded.

Vide 1 *Lut.* 25. Because there were only fourteen Days between the Telle and Return of the Scir' fac̄, and upon Demurrer held good.

6thly. Abatement, by reason of Marriage, &c.

T. S. &c. sum fuit ad respondend' T. W. M. & Alice Ur' ejus ex- rici Testi P. U. Gen de placito quod odat eis Centum Libras quas eis in- de detinet, &c.

Et p̄dia T. per A. B. Attor̄n suum venit & petit Judicium de hi p̄dicto quia dicit qđ Matrimum die impetrationis h̄is Originalis

That the Plaintiff and his Wife were not married at the Time of the Original.

lis p̄dicatorum W. & Alicie inter eos
cundum legem Ecclesiasticam huius
Regni Anglie non fuit solemnizatum
Et hoc parat' est verificare unde petit
Judicium de brevi illo, &c.

Repl'.
And Issue.

¶ **C**assari non quia dicit quod
trimoniū int' ipsos W. & A.
ante diem impetraconis brevis Originalis
ipsorum W. & A. scilicet vice
die Julii Anno Regni Domini Ricardi
nunc, (&c.) sept' scdm legem Ecclesiasticam
huius Regni Anglie fuit solemnizatum
videt' apud C. p̄dicta', Et
petit qđ inquiratur per Patriam,
Ib, &c. Vide Hans. 103.

That the
Plaintiff married after the
Writ.

¶ **E**t p̄dictus R. per C. D. Attor
suum venit & Defend vim &
juriam quando, &c. Et petit Judicium
de brevi p̄dicto, &c. Quia dicitur
quod p̄dicta Elizabetha post diem im
p̄traconis brevis Originalis ipsorum
C. W. & R. scit (tali die & loco)
apud (&c.) cepit in virum quendam
R. S. Gen' qui quidem R. S. ad
superstes & in plena vita existit
apud (&c.) p̄dicta', Et hoc parat'
verificare unde petit Judicium de
p̄dicta', &c.

Vide 1 Bro. 7. 2 Mod. Intr. 7.
Red. 181. 203, 204. Clif. 8. 14.

Defendant pleads Covert Baron, and
Estoppel thereto, because of an Impar
Et respondend' Ouster Agard, because

Plea was only in Abatement, and was not
pleadable after Imparlance. *Vide 1 Lut. 23.*

Et p̄dia' M. per J. S. Attoꝝnd
suum veni & per Judic de bill
p̄dia' quia die qđ ipsa tempore exhi-
bitione hille p̄d' fuit cooperta de quod
M. viro suo qui quidem H. V. adhuc
vives & in plena vita existit videt
et in Com H. unde de quo p̄d'
non notatur in Villa p̄d' eadem M.
Judic de Villa p̄d', Et qđ Villa
cassetur, &c.

For that the
Defendant
was married
at the Time
of the Bill ex-
hibited.

Et p̄dia' Johanna per A. B. At-
toꝝnd suum veni & Defendi vim
injuri quando, &c. Et per Judic de
illo quia die quod ipsa eadem J.
impetrat brevis Original ipsius R.
cooperta fuit de quodam W. B.
suo videt apud S. p̄dia', Et hoc
est verificare unde ex quo idem
B. non nominatur in brevi p̄dia'
M. J. per Judic de brevi illo, &c.

Aliter.
For that the
Defendant
was married
at the Day of
the Writ.

Et p̄dia' R. die qđ breve suum pre-
dia' ratione preallegat' cassari
debet quia die, Quod eadem J. die
impetrat brevis Original ipsius R.
et (tali die & anno) non cooperta
de p̄dia' W. B. viro suo prout
R. Johanna superius allegabit,
et per qđ inquiratur per patriam,
p̄dia' J. filii, &c.

Repl.
And Issue
thereon.

ff. Defendi

Aliter. That the Defendant was Covert at the Time of the Writ, with Traverse after Issue.

ff. **D**efens venit, & petit Judicium de brevi p̄dicto quia dicit quod ea eadem Defens die impetraconis brevis Originalis ipsius Quer fuit cooperta de quodam P. R. viro suo videlicet a P. p̄dicta, Et hoc (Ec.) Unde ex p̄dicta P. non nominatur in brevi p̄dicta eadem Defens per Judicium de illo, Ec.

Repl', 2d' fuit sola.

ff. **C**assari non debet quia dicit p̄dicta Defens die impetraconis brevis Originalis ipsius Quer fuit (tali die) apud P. p̄dicta fuit sola, Et hoc quod p̄dicta defendens die impetraconis brevis Originalis ipsius Quer fuit cooperta de p̄dicta P. R. viro suo p̄dicta Defendens superius allegavit Et hoc (Ec.) Unde ex quo p̄dicta Defens transgre & Ejectionem p̄dicta superius cogit idem Quer petit Judicium & sessionem tmini sui p̄dicta una cum damnis, (Ec.) Sibi adjudicari, Ec.

Issue upon the Traverse.

ff. **E**t p̄dicta Defens ut prius dicit ipsa die impetraconis brevis Originalis ipsius Quer fuit cooperta p̄dicta P. R. viro suo prout eadem superius allegavit, Et de hoc, (Ec.)

See Clerk's Assist. 5. 14. Reg. placit. Placit. Gen. 4. 2 Mod. Int. 7. Harl. Bro. Red. 203.

See also Rast. 326. Hern 5. Ass. Thomp. numb. 7. 1 Brown. fol. 4. numb. fol. 7. numb. 31, &c.

Quod Quer ante Orig cepit virum,
quod fuit divor causa precontract
Orig pro. Rob. Ent. 3.

Quia Defend fuit cooperta tēe pmit-
tis. Clerk's Assist. 81. Clift. 5.

Non cooperta cū viro plede in Un-
rior Court. Clerk's Ass. 106.

De Unques accouple in Loyal Matri-
ny. Idem 78.

Note, That after Continuance, the Defen-
dant shall not be admitted to plead, That the
Plaintiff was made a Bishop; or that the Wo-
man Plaintiff took a Husband pending the
Continuance, except that he plead it after the last
Continuance: But it is otherwise of the Death,
where the Plaintiff was Covert at the
time of the Writ purchased, because these
things will abate the Writ de Facto, 32 H. 6. 10.

Also if after the last Continuance, the Plain-
tiff be made a Knight or Baronet, it seems
the Plea shall not abate. 1 Cro. 104. 371.
Ed. 6. cap. 7. 6 Co. 27. Hob. 129.

See after for Things done after the Writ
purchased.

See at the latter End for Things pleadable
after the last Continuance.

Note, That to a Declaration upon several
promises in an Action brought by a Woman
for Imparlance, the Defendant pleaded that
the Plaintiff took H. D. to Husband after the
purchase of the Writ, Resp qd non, Et
petit, &c. Demurer inde, Et quod
affirmatur quod Quer fuit sola,
Judic qd Vlt' respondeat. Vide
Lut. 1639, &c.

And

And *Note*, That after Impar lance the Defendant said, That the Plaintiff was made Knight at the Time of the Writ purchase and it was adjudged a good Plea, although it was after a Continuance by Impar lance. But it is otherwise after a Continuance by *Dies datus*, 20 H. 6. 17.

By 32 H. 6. 30. it is said, That the Defendant after Impar lance cannot plead, that he himself was made a Knight after the Writ purchased; but he may plead, that the Plaintiff was made a Knight pending the Writ.

And 28 Ed. 4. fo. 9. says, The Writ is abated by Death, and abateable by Jointenancy and where a Man is made a Knight, or a Woman takes an Husband, and the like: And it is said, That where a Writ is abateable, if the Plaintiff imparl, or take Continuance, he cannot plead in Abatement. But otherwise it is if it were abated. See 7 H. 6. fo. 16. & 20 H. 6. fo. 17.

And *Note*, It is pleaded there, that the Plaintiff is a Knight, 32 H. 6. 12.

Quod Quer' cepit in virum post ult' continuacionem, Resp' qd est sola, Placit. Gen. Simile in Atraint, Idem 134. Sile post ult' cont' Bile, Thomps. 1. Simile post ult' continuat' Scir' fac & Demurr' de, Vidian 77.

Quod quer' t'ee dicton' verborum fuit adhuc est Ur' Def', Resp' qd non fuit adhuc est Ur' Def' & Exit' inde, 1 Bro. 63.

thly. Abatement by reason of Death.

¶ Et p̄dia' R. per J. S. Attorn
 suum veni & protestando qd̄ ipse
 in nullo est Culpabilis de transgr̄ p̄dia'
 p̄sent p̄dia' N. superius versus eum
 queritur p̄ p̄lito dicit quod p̄dia' W. un
 Def' mortuus est & obiit ante diem im
 p̄dia' h̄revis p̄dia' N. p̄dia' videt
 apud T. p̄dia' in Com̄ p̄dia', Et hoc
 parat' est verificare, Unde pet' Judic
 de h̄rebi p̄dia', (Ec.)

For that one
 of the Defen-
 dants died be-
 fore the Writ.

¶ Et p̄dia' N. dic' qd̄ h̄rebe suum pre-
 dia' r̄one preallegat' Cassari non
 quia dic' qd̄ p̄dia' W. die impe-
 h̄revis p̄dia' scilicet (tali die &
) fuit superstes & in plena vita
 est apud T. p̄dia' & non mortuus
 p̄dia' R. superius allegabit, Et
 pet' qd̄ inquiratur per patriam, (Ec.)
 de Bro. Red. 175.

Repl' and
 Issue.

¶ Et p̄dia' Def' petit Judicium de
 h̄rebi p̄dia', Quia dicit qd̄ post ul-
 tim continuac̄onem placiti p̄dia' sci-
 post p̄diaum Crastinum Sed Tri-
 is ultimo p̄teritum de quo die lo-
 p̄diaa ultimo continuata fuit usq̄
 h̄re diem scilicet ad p̄diaum Crasti-
 Animarum & ante eundem Cra-
 Animarum scilicet primo die No-
 is proximo p̄terito p̄diaus Quer
 S. in Com̄ p̄diao obiit, Et hoc
 est verificare unde petit Judicium
 h̄rebi illo, Ec.
 R. Et

That the
 Plaintiff died
 after the last
 Continuance.

Repl'. By the
Plaintiff's At-
torney, that
his Master is
alive.

Issue.

ff. **E**t p̄dictus Attor̄n p̄dicti R. mine & p̄o ipso R. Maḡro dicit quod breve suum p̄dictum t̄one p̄allegat Cassari non debet quod dicit qđ idem R. superstes & in p̄bita existit videlicet apud S. in p̄dicto & non mortuus est put p̄dicto Def' superius allegabit, Et hoc eodem Magistro suo petit qđ inquitur per patriam, Et p̄dicta Def' similiter Ideo, &c.

Vide Bro. Red. 199. Clerk's Assise. 6. Placit. Gen. 7. Reg. Placit. 293. In d. vers' 2 Adm, Quod unus Def' obiit post ult' continuacion. Bro. Red. 175.

In Quare Imped p̄ Baron & f̄ quod Hr' obiit post ult' Continuacion sine Exitu, & Demurr inde. W. Ent. 771.

In Appeal, Quod frater sen' Appellatus fuit in vita tempore Appelli & obiit post Appellum p̄os, Hans. 2;8. Formedon post vium & ultimam. Continuacion, un' tenen' obiit & licet querendi melius breve. Placit. Gen. Vid.

In Scire fac' qđ un' Quer' obiit apud D. Repl' qđ est Divus apud S. C. cium Brev. 345.

In trans' vers' A. & B. Non cu' B. & quod A. obiit ante diem impet' h̄is. Clerk's Assise. 10. 2 Mod. Int. 15.

ff. Quare

Quando, &c. Et petit Iudicium de brevi predicto quia dicit quod ante diem impetrationis brevis illius licet (tali die & anno) per quer apud in Com predicta obiit, Et hoc, &c. Unde petit Iudicium de brevi illo, &c.

For that the Plaintiff died before the Original.

Vide 1 Bro. 4. 2 Mod Int. 5. Qui querens obiit post impetrat Brevis. Clif. 6.

See for Precedents on this other Division, *Rast.* 107, 108, 126, 161. *Ast.* 8. 384, 416. *Tomp.* 3. numb. 17. 1 *Brown.* fo. 3. numb. 11. fo. 4. numb. 18, &c.

In Trespas against three, if one be dead after the Writ purchased, the Writ shall abate in the whole, 7 E. 4.

Trespas against three, one dies.

In Trespas, the Death of one Jointenant, Plaintiff, shall abate the whole Writ. Other-
wise in Quare Impedit, Audita Querela, and the like for the Necessity. *Cro. Jac.* 19.

Death of Jointenant, Plaintiff.

Note, That Death or Coverture, at the time of the Writ purchased, does abate the writ de facto; but Coverture after makes it in-
teable. 36 H. 6. 11. 3 Bro. 138. *Cro. Ent.* 173. *Rast.* 108, 161, 126, 167.

Death or Coverture at the Time of the Writ.

Death of the Plaintiff, or one of the Plaintiffs, abates the Writ. *Rast. Ent.* 416. *N. B.* 35. b.

Death of a Plaintiff.

And one Defendant may plead the Death of the other at or before the Writ purchased, that there is no such Person in rerum natura, 20 H. 6. 30. b. and the Writ shall abate; if it is otherwise where one of the Defendants dies after purchasing the Writ. 18 Ed. 4. 1. *H. 7.* 16. *Rast. Ent.* 126.

One Defendant pleads the Death of the other.

In Replevin
and Avowry
upon a Stran-
ger.

In Replevin, if the Defendant avow upon an Executor, the Plaintiff in the Replevin cannot plead in Abatement of the Avowry. 22 E. 4. 35. b.

In Personal
Actions
where is no
Severance.

In all Personal Actions where no Severance lies, there the Death of one of the Parties shall abate the Writ; but not if it be a Judicial Writ after Judgment. 10 Co. Read and *Redman's Case*.

Death of the
King.

In a Writ of *Quare Impedit*, or other Original Writs, the Death of the King before Judgment shall not abate the Writ de facto; but it is otherwise where the Defendant dies. So in an Information for the King, or for the King and the Informer, upon the Death of the King before Judgment, the whole Proceedings are discontinued; but the Information it self shall stand good, and Process shall be awarded against the Party *de Novo*. Of Indictments (that are not for Felony or Treason), for after Trial they are within the Statute of 1 Ed. 6. cap. 7.

One dies, in
Action a-
gainst two.

In Account against two, one dies after first Judgment, the Writ shall abate against him.

Husband dies.

In Trespass against Husband and Wife after Verdict, and before the Day in Bank, if the Husband dies, it is doubted if the Writ shall abate; but agreed, that if the Wife dies, the Writ shall not abate against the Husband.

Wife dies.

In Writ of
Error.

So in case of Slander by the Wife, the Writ shall abate after Verdict. Cro. Car. 1. Hob. 129.

In a Writ of Error, the Death of one of the Plaintiffs shall abate the whole Writ. 3 H. 6. 23.

Abatement for *Misnomer* and *Misprision*.

Et R. J. in pp^d pson sua ven, Et
 die qd ipse est eadem persona ver-
 quam p^dia' quer tulit breve suum
 ia' per nomen Roberti Johnstone,
 defend vim & injur quando, &c. Et
 qd ipse vocatur & cognoscitur p
 men R. Johnson & non p nomen
 Johnstone put p breve p^dia' suppo-
 tur, Et hoc parat est verificare, Unde
 Judic de brevi p^dia', &c.

For that the
 Plaintiff's
 Sirname is
 misnamed.

Et p^d quer die qd breve suum p^dia' Repl.
 tione pallegat cassari non debet, Quia
 qd p^dia' R. Johnstone qui moda
 paret, &c. est eadem psona versus
 am ipse tulit breve suum p^dia' & vo-
 tur & cognoscitur tam per nomen
 Johnson, quam p nomen R. John-
 , Et hoc per quod inquiratur p pa-
 am, Et p^dia' R. Johnson silit, &c.

Repl.

Vide Reg. Placit. 288. Thomps. 1. 1 Bro. 3.
 vide Clerk's Man. 435. Hans. 119. Et
 postea.

Et p^dia' W. & quedam E. Ur'
 ejus in ppria persona sua ven
 die quod p^dia' E. per Vic Com p^dia'
 fuit per nomen A. Ur' ejusdem
 prout per breve p^dia' supponitur,
 hoc, &c. Unde ex quo p^dia' E. in
 bi p^d superius specificat nominatur
 & non E. iidem W. & E. per Judi-
 m de brevi ill, &c.

For that his
 Wife is mis-
 named.

De Christian Posme. Vide Cl. Ass. 12.
Reg. Placit. 289. Thomps. 1. Placit. Gen. 8.
2 Mod. Int. 12. Clif. 16.

Abatement pleaded severally by Three
Defendants.

ff. **A.** B. nuper de J. &c. Gen C. D.
nuper de K. (&c.) Neom & E. G.
nuper de L. &c. Neom attach fuer, &c.
G. H.

First pleads
two of the
same Name,
and no Di-
stinction
which is
meant.

Et A. B. nuper de J. in Comd p
dia' Gen C. D. nuper de M. in Com
dia' Neom & E. G. nuper de C.
Comd p'dia' Neom in prop? pson
veniunt, Et sepatim dic qd ipsi
eodem psona versus quas p'dia' G.
tulit h're suum p'dia' per nomina (&c.
in the Parr) Et idem A. B. dic qd
p'dia' Villa de J. duo habentur
vocati & cognit per noia & cogn
A. B. sen Gen & A. B. jun Gen
Quo ipse semper a nativitate sua
usque nominatur A. B. jun Gen,
hoc paratus est verificare, Unde ex
non apparet in h're p'dia' vers qu
rozdnd A. B. sen & A. B. jun id
h're impetrat est idem A. B. jun
judicium de h're illo, &c.

The Second
pleads *Non
commorans*,
and that the
Place in the
Writ is no
Vill or Ham-
let, &c.

Et idem C. D. de M. p'dia' dic qd
se die impetracon h'revis p'dia' f
comozans & conbersans apud Vill
de M. p'dia', Absq hoc qd ipse unqu
fuit comozans apud K. p'dia' p
h're p'dia' supponitur, Et ulterius
qd p'dia' locus voc K. est in p'dia' D

de M. Et est nulla Villa p se nec Ham-
lettus neque locus extra Villam &
Hamlettum, Et hoc paratus est verifi-
care, Unde ex quo ipse non nominatur
in brevi p̄dicta de aliqua Villa sive ali-
quo Hamletto vel loco cognit extra Vil-
lam vel Hamlett in quo vel qua idem
C. D. fuit comorans seu conuersans die
impetraconis hys p̄dicta vel antea se-
cundum formam Statuti de addiconibus
nominum & cognominum in libris in
quibus process utlagar jacet imponend
dit & probis per iudicium de brevi
p̄dicta, &c. Vide Clerk's Assist. 3. 13. Reg.
Placit. 287. Vide Postea.

Stat. 1 II. 5.
cap. 5.

Et idem C. D. die qd ipse nominatur
& vocatur C. D. & p nomen & cogno-
men ill a tempore nativitatis sue huc-
usq; semper cognit & vocat fuit, Et non
nomen C. F. prout p breve p̄dicta sup-
ponitur, Et hoc parat est verificare,
Unde per iudicium de brevi ill, &c.

The Third
pleads *Misnos-*
mer of his Sir-
name.

Vide de Surnosme, Thomps. 1. Clerk's
Assist. 103. Placit. Gen. 7. Hans. 119.

ff. Et p̄dicta C. p (Ec.) Attoznd suum
ad & defend vim & injur quando, &c.
Et petit iudicium de villa p̄dicta quia
qd ipse nominatur & vocatur per
nomen C. D. & p idem nomen a tempore
nativitatis sue semper cognit & vocat
fuit, Abloq; hoc qd ipse vocatur per no-
men C. C. seu p idem nomen cognit &
vocat fuit, Et hoc parat est verificare,
Unde petit iudicium de villa p̄dicta, Et
villa illa cassetur, &c.

For misna-
ming the De-
fendant's Sir-
name, calling
him C. T. in-
stead of C. D.

See after concerning the Sirname. *Et vide*
1 Lut. 10.

Repl', That
 he is, and al-
 ways was cal-
 led G. T.

ff. Et p'dict' quer dicit qd' p aliqua p
p'dict' Des' superius p'litando allegat
villa sua p'dict' cassari minime debet
quia die qd' idem C. nominatur & voca-
tur C. T. & per idem nomen a tem-
pore nativitatis sue semper cognit' &
vocat' fuit put p' bile p'dict' suppo-
nitur, Et hoc petit quod inquiretur p
p'iam, Et p'dict' C. filit, &c.

Quia Scriptum fact' fuit Patri jam
defunct' & non filio ejusdem nois. Clift. 7.

For misna-
 ming Defen-
 dant's Chri-
 stian Name.

ff. Et J. P. p C. S. Attorn suum
*ven' & defendi bim & injur, &c. * Et*
petit judicium de villa p'dict' quia die
quod ipse est & a tempore nativitatis
sue hucusq' semper cognit' & nominat'
fuit per nomen & cognomen J. P. ab
que hoc quod ipse idem J. modo est vel
unquam fuit cognit' vel nominat' p
nomen & cognomen C. P. put p' villam
p'dict' superius supponitur, Et hoc, (&c.)
Unde petit judicium de villa p'dict' & qd'
villa illa cassetur, &c.

Vide 1 Lut. 10.

** Quere of this, and if ought not to say, Et*
qd' ipse est eadem person', (&c.) as before.

For that the
 Defendant is
 named of S.
 which is a
 Place in E.
 and no Vill
 or Hamlet, &c.

ff. Et R. W. de C. in Com p'dict'
Butcher, in pp' p'son sua ven' & dicit
ipse die impetracon' h'is p'dict' fuit com
morsans & conbersans apud Villam
E. in Com p'dict' & est eadem p'son
versu

versus quam p̄dicta' C. p̄ nomen R. W.
de S. tulit breve suum p̄dicta', Et defendi
him & injur quando, &c. Et dic q̄ p̄
locus voc S. est in p̄dicta' Villa de C. &
est nulla Villa p̄ se nec Hamlettus neq̄
locus extra Villam & Hamlettum, Et
hoc parat' est verificare, In quo Casu
idem R. in brevi p̄dicta' nominari debu-
isset de p̄dicta' Villa de C. Unde cum sic
non nominatur secundum formam Sta-
tuti de additionibus cognominum in
Brevibus sup quibus p̄cessus Ulla-
garie jacet imponendū petit judicium
de brevi p̄dicta', &c.

Secundum
Stat.

Vide Reg. Placit. 287. Clerk's Assist. 13. Vide
Lut. 35. One of the Defendants pleads, that
the other being outlawed was misnamed in
the Addition of *Junior* for *Senior*. Demurrer
thereupon, and Judgment quod respondē
Ouster, because one may not plead the *Mis-*
nolmer of his Companion.

II. Quibus lectis & auditis idem
G. W. per * — Attorn suum
defend him & injur quando, &c. Et om-
nem felon, Et quicquid, &c. Et petit
judicium de Brevis Original p̄dicta' quia
dicit quod ipse idem G. W. per breve
illud appellat' existit p̄ nomen G. W.
super de Paroch Sancte Anne Westm
in Com Midd Gen Ubi revera & in
facto infra Com Middlesex' p̄dicta' est
quedam Paroch vocat' & cogn per no-
men (Paroch Sancte Anne infra liber-

For misna-
ming the
Parish.

* Quere, If this ought to be pleaded by Attorney.

H. 6. 9. 21 H. 6. 27. Vide Postea.

tat' Westm) sed in eodem Com Midd non
habetur nec die impetrat' Brevis Ori-
ginalis appellu pū seu unquam habe-
batur aliqua Paroch Villa sive locus
cognit' & nuncupat' p nomen (Paroch
Sancte Anne Westm) tantum put p dicit'
E. per breve suum pū superius supponit
Et hoc ipse idem G. parat' est verificare
Unde petit judic' de hui illo Et qd breve
pū cassetur, &c.

For that there
are Two Villis
called T. and
neither with-
out Addi-
tions.

ff. **E**t p dicit' Def. p—*—Attorn suum
venit & dicit qd in Com S. due ha-
bentur Ville vocat' T. videlicet North T.
& South T. & neutra earū sine addicione
absq; hoc qd in eodem Com habetur ali-
qua talis Villa Hamlett sive locus cog-
nit' extra Villam vel Hamlettum vocat'
vel cognit' T. tantum sine addicione put
p hie p dicit' supponitur Et hoc parat'
est verificare Unde petit judicium de
breve illo, &c.

* Q. as before.

Repl.
That there is
Vill T. with-
out Addition.

ff. **C**assari non debet quia dicit qd in
Com p dicit' habetur talis Villa
vocat' T. sine addicione put p breve pū
supponitur Et hoc petit qd inquiratur
p priam, &c. Vide Clerk's Ass. 4. 1 Bro. 2
1 Mod. Intr. 341, 343.

See for Precedents, *Rast.* 47, 68, 79, 108,
159, 362, 615, 646. *Ass.* 3, &c.

Misnosmer af-
ter Impar-
lance, and
when.

Note, It is held by some, That after Impar-
lance one may plead *Misnosmer* of the Place,
if it be not Parcel of the Name; as if the Writ
be

Re. *Precipe qđ reddat Manerium de D.*
 In *D.* the Tenant after Imparlance may say,
Nul tiel Ville D. within the same County;
 But if the Defendant had been named *J. S.*
 of *D.* and after imparl, he shall not say, *Nul*
tiel Ville D. because that *D.* is Parcel of the
 Name, and comes in Abatement. 13 *H. 7. 17.* Not when
 15 *H. 7. 14.* 16 *H. 7. 17.* 20 *H. 7. 13.* 9 *E. 4. 3.* Parcel of the
 25 *H. 6. 5.* Name.

After Imparlance, an Attorney for the Cor-
 poration shall not plead that they are corpo-
 rate by another Name.

Yet it's said, that if one be named of *D.* at Two Villis *D.*
 another Term, he may say that there are and neither
 Two Villis *D.* and neither without Addi- without Ad-
 tion. 32 *H. 6. 30.* And so 18 *Ed. 4. 9.* up- dition.
 per *D.* and nether *D.* and nul sanz Addition;
 but *vide* 21 *E. 4. 1. b.*

It's said, that if the Defendant plead *Misnos-* Plaintiff Im-
 er, and the Plaintiff imparls, and at ano- parls, and
 ther Day the Defendant makes Default, yet Defendant
 the Plaintiff shall recover upon that Default makes De-
 notwithstanding his Imparlance; and no Di- fault.
 stress ad manutened placitum shall issue;
 and the same Law is if he had pleaded in Bar;
 but in a real Plea, a petit Cape shall issue.
 2 *H. 6. 29.* 7 *H. 6. fol. 30.* 39 *H. 6. 17.*

And that every Default after Imparlance is Default after
 peremptory; and if it be in a Real Action, Imparlance,
 of the Land shall be awarded, and so peremptory,
 on *Voucher.* 38 *H. 6. 33.* And by 39 *H. 6. 15.*
 108. that it is peremptory in Debt, and so in a
recipe on a *Voucher.*

3 *H. 6. 8.* The Defendant was named of *G.* Two Gates *G.*
 and says, that in the same Vill are Two Gates, and neither
licet, Eastgate and Westgate, and neither without Ad-
 without dition.

without Addition; *Quære* if he may not say *Dul tiel Ville.* 3 H. 6. 8.

Note, That regularly no Man shall plead *Misnofmer*, but the Party himself, 21 H. 6. 2. vide 8 H. 6. 9.

Who may
plead *Misnof-*
mer.

So that if an Action be brought against many, one may not plead *Misnofmer* of the other but he may plead *Dul tiel in rerum natura.* 22 E. 4. 45. a. & 21 Ed. 4. 71. b. and where this agrees 35 H. 6. 50. in *Transf.*

Who not.

So in an Action brought against Husband and Wife, altho' they be one Person in Law yet one of them may not plead *Misnofmer* of the other. 6 Co. 64. b. *Finch's Case*.

That his Wife
is named M.
and not E.

In Trespass against J. and E. his Wife; he appears and says, that his Wife is named M. and not E. 22 H. 6. 45. a.

Misnofmer of
Name of Bap-
tism.

By the 3 H. 6. 26. it's said in all Cases where the Name of Baptism is mistaken (if it be made in the Case of Felony) one may plead *Misnofmer*; but it is otherwise of the Sirname, and in this Case the Party is not in any Mischance for he may have a Writ of Deceit; yet in this there made a *Quære* in case of an Obligation.

Of Sirname.

But this seems to be held otherwise, for there are many Precedents in Abatement for misnaming the Sirname, as that he is called C. B. and not C. D. *Rast. Ent.* 49, 50, 54, 107, 296, 334, 516, bis 610. *Ash.* 1.

Misnofmer in
Trespass.

Misnofmer in Trespass shall not abate the Writ, but only against him that pleads the Plea. 5 Ed. 4. 2. 2 H. 7. 16. 23 H. 6. 2. *Rast. Entr.* 107.

Misnofmer in
Addition.

For *Misnofmer* and Default in an Action 8 Co. *Blackmore's Case*.

Misnomer in a *Scire Facias* shall abate the In *Scir. Fac.*

Writ. 9 *Ed.* 4. 35.

In a *Præcipe* against *J. E.* the Son of *W. Es.* In a *Præcipe.*

and, at the Return of the Grand *Cape*, the

Defendant said his Father was named *Edmond*,

and by *Thorp* it is said to be a good Plea in

Abatement of the Writ, before the Default

made. 40 *Ed.* 3. 2.

In *Detinue* of Charters against *J. C.* the Writ In *Detinue;*

was, *Præcipe J. C. fil & Heredi R. C.* and

counts of a Bailment to the Defendant him-

self, 'tis no Plea for him to say, that he is Son

and Heir to *W. C.* and not to *R. C.* because he

is not charged as Heir, but of his own Posses-

sion. 10 *E.* 4. 12. a. by the better Opinion.

Where one is misnamed and outlawed, the

Purchase of a Pardon shall no stop him to

read *Misnomer.* 21 *H.* 6. 7.

Misnomer,
Outlawry
and Pardon.

He that renders himself to the Exigent, or

'tis to the *Capias* or *Pone*, may plead *Misnof-*

er. 19 *H.* 6. 43. And by 3 *Ed.* 4. 15. by

the better Opinion, when a Man comes in

'tis, he may plead *Misnomer*; but if one

comes in by *Capias* or Distress of his Goods, or

Summons of his Land, without question he

may plead *Misnomer*, for the Trouble that he

is of his Person, Goods or Lands. *Vide Ed.* 4.

a. 21 *Ed.* 4. 78. a. 21 *H.* 7. 8.

So in a *Præcipe* to the Grand *Cape* one may

say, that his Lands were seized by the Name

of *R.* and that his Name is *J. &c.* 22 *H.* 6. 45.

W. S. was bound in a Bond by the Name of

S. and an Action upon that Bond was

brought against him by the Name of *W. alias*

J. J. The Defendant pleaded *Non est fa-*

ctum, and the Matter was found by Special

Verdict.

Misnomer up-
on appearing
gratis.

A *Fortiori*
when by *Cap.*
or Distress.

Upon a *Præ-*
cipe to the
Grand *Cape.*

On Bond the
Party ought
to be sued as
misnamed.

Verdict. Adjudged, That the Plaintiff should not recover, for the Action should have been brought against him, by the Name of *J.* he was named in the Bond, and he shall be estopp'd to say that his Name was *W.* 11 *Dyer* 279.

Estoppel.

The Party himself must plead it.

When not pleadable after a *Supersedeas*.

Addition of Place not necessary.

Where necessary.

J. S. of *T.* near *F.*

How the Defendant ought to conclude.

Note, That the Misnaming of the Place is not pleadable by Attorney, but ought to be pleaded by the Party himself. 8 *H. 6.* 9. *21 H. 6.* 27.

If one takes out a *Supersedeas*, he shall afterwards plead *Misnomer* of the County where he was living. 19 *H. 6.* 65.

In Actions where no Addition is necessary, *Misnomer* of the Place is vicious. 21 *H. 6.* 54.

In Replevin, *Misnomer* of the Place is material, otherwise in Battery. 2 *H. 6.* 14.

In an Action brought against *J. S.* of *F.* near *F.* 'tis no Plea for him to say, that he dwelt at *T.* in *F.* without that, that he dwelt at *T. juxta F.*— But it is a good Plea for him to say, that there is *T.* in *F.* & *T. juxta F.* and that at the Day of the Writ, &c. he was living at *T.* in *F.* without that, that he was ever dwelling at *T. juxta F.* 21 *E. 4.* 75. a.

In Trespass against one *J.* of *F.* the Defendant said, That at the Time of the Writ purchased he was dwelling at *D.* in *Kent*; it is no Plea, for he ought to conclude, and not at 19 *H. 6.* 1. but he shall not do so after he has affirmed the Name by Imparance. 35 *H. 6.* 35. And 32 *H. 6.* 35. says, the Defendant after Imparance cannot plead that he is dwelling at another Place than is in the Count.

fl. D.

Dicit. vend & dicit quod non habetur nec die impetraconis hris Orig^{is} *Nul tiel per- son' in rerum natura.*

originalis p^o nec unquam postea hebatur aliquis talis p^osona vocat^r J. P. in re- rum natura qualis p^o h^o p^o superius supponitur Et hoc parat est verificare unde petit Iudicium de h^oebi illo, &c.

Et p^odia' J. B. Attoz^o p^odia' quer^r no- mine & p^o ipso quer^r Mag^o suo dicit q^o &c.) Cassari non debet quia dicit quod & die impetraconis hris Orig^{is} nalis p^odia' scilicet (tali die) hebatur & adhuc hetur talis persona vocata J. P. in rerum natura qualis p^o h^o p^o superius supponitur videlicet apud (&c.) Et hoc idem Attoz^o p^odia' quer^r p^o eodem quer^r pet^r q^o inquiratur per p^oriam Et p^odia' def. filit^r J^o, &c.

Repl.
By the Plain-
tiff's Attor-
ney.

Vide Placit. Gen. 8. & 2 Mod. Intr. 13.

See Rast. 49. 611. Alton 10. 1 Brown. fol. 8. Amb. 32.

Et p^odia' G. & H. p^o — Attoz^o *Nul tiel Vill' vocat. K.*
sunt vend & pet^r Iudicium de h^oebi p^odia' quia dicit q^o in Com p^odia' non habetur nec die impetraconis hris Orig^{is} p^odia' R. hebatur aliqua talis Villa sive Hamlet vel locus extra Villam & Ham- let cognit^r vel vocat^r p^o nomen de R. put^r q^o R. p^o h^o suum p^odia' superius suppo- nit^r Et hoc (&c.) Unde petunt Judi- cium de h^o illo, (&c.)

Et p^odia' R. dieit q^o h^o suum p^odia' *Repl. Quod est Vill' vocat. K.*
racone p^oallegat Cassari non debet quia & die quod in Com p^odia' habetur & die im-

impetraçonis huius Originalis ipsius
scilicet (tali die) habebatur Villa cog
nit & vocat' p nōen de H. put ipse p h
suum p̄dictum supponit' Et hoc per
inquiratur p p̄iam, (Et.)

Vid. Rast. 108. Vide Misnosmer de V
Rob. Ent. 285. 2 Bro. 165. Clerk's Assise. 318
Propter defectum addicō Vill vel Ham
let'. Clif. 15, 16. Pur misp̄sion de Pa
roch. Bro. Red. 2. 2 Mod. Intr. 13. 1 Bro.

Nul tiel in rerum natura.

Upon Bond
to stand to Ar-
bitrament.

IT is said, if one be bound to stand to the Ar-
bitrament of J. S. in Debt upon Bond, *Nul tiel J. S. in rerum natura*, at the Time of the
Submission, is no Plea, 18 Ed. 4. 4.

But in an Action brought against many, one
may plead *Nul tiel in rerum natura* as to the
others. 22 Ed. 4. 45.

In Appeal.

In an Appeal against many, *Nul tiel in rerum
natura*, as to one, is a good Plea; and altho
there be such an one in another County, yet
it is a good Plea; but if one such be in the
same County where the Vill is, it is otherwise.
21 H. 7. 31. 27 H. 8. 26. 18 Eliz. Dyer 348.
349. *Vide infra.*

In Trespass.

In Trespass against Three, upon an Assault
and Battery in one Vill, one may plead *Nul tiel in rerum natura* as to one; but not *Misno-
mer* of the other. 35 H. 6. 50.

Three imparl
jointly, Two,
&c.

It is said, that if Three imparl jointly, and
Two demand Judgment of the Writ, because
there is *Nul tiel in rerum natura* as to the Third.
By the Court, they shall not have such Plea
because the Imparlance was joint; but it is
said

did to be otherwise, if the Imparlance had been several. 4 H. 7. 17. So that if Three im-
parl jointly, and one makes Default, the other
cannot plead no such in being, as one which
makes Default.

In *Quare Impedit* against Two, one pleaded In *Quare Im-*
that there was no such Church, as it was na- *pedir.*
med in the Writ. The other pleaded that there
was no such Bishop of *Lincoln*, as was named:
And Issue was joined upon the First, and a De-
nurrer upon the Second Plea; and the First
being found for the Defendant, the whole
Writ abated. *Hob. 250.*

In an Appeal against Two, *Nul tiel person.* In Appeal
in *rerum natura* as to one, shall abate the whole
Writ, [otherwise of the Death of one, as it
seems;] but it is otherwise in Affise or Writ of
Dower, as in *Pollard's Case. Com. 89. b. Vide*
Idra.

If Trespass be brought against Three, and In Trespass.
one saith there is no such Name in *rerum*
natura as the third Person's Name. If it be
found, the Writ shall abate in the Whole, per
Edw. 4.

In Trespass in *F. and H.* the Defendant said, No such Vill
that there is no such Vill or Hamlet in the or Hamlet in
County; and the better Opinion was, the County.
that this Plea shall abate the whole Writ.
and yet *quare* how it should have been tried,
it seems by a Jury of the Visne of *F. 4 E. 4.*
a. Co. Litt. 155. b. Rast. Ent. 108, 298.
Ent. 121.

It's also said, That *Nul tiel Vill* ought to be *Nul tiel Vill to*
pleaded to the first Name, and therefore *Nul the Alias dist.*
el Vill named in the *Alias dist.*, is no Plea.
E. 4. 15. a.

In

In a *Scire Fac.*

In a *Scire Facias* to execute a Fine of Land in *D. Nul tiel Vill* is no Plea; because the Fine shall be made void by such Plea. 2 *Ed.* 51. *b.*

In Avoidance of an Outlawry.

If one say in Avoidance of an Outlawry that he is of *W. absque hoc* that he was living in *D.* he may afterwards say, *Nul tiel Vill D.* in the same County; because the Confession of one Thing not material, shall be no Estoppel. 22 *Ed.* 4. 38.

After Impar lance the Defendant may say That the Plaintiff in his Declaration has not shewn where the Bond was made. 4 *Ed.* 14. *b.*

For that he is and was a Chapman, and not a Husbandman.

N. E dicat qđ ipse est & die impetra-
tionis h̄ris Original ipsius M. semper antea fuit Chapman & non Husbandman put per h̄re p̄d superius supponitur & hoc parat est verificare Unde ex quo ip̄e non nominatur in certo m̄sterio de quo idem Def. est iuxta formam Statuti de additionibus Nominum Cognominum in brevibus in quibus processus Atlagar jacet edit & p̄vis idem defendi petit Judicium de brevi illo.

Repl.
That he was a Husbandman.

Et p̄d M. dicit qđ h̄re suum p̄dictum r̄atione p̄allegar cassari non debet qui dicit qđ die impetraconis h̄ris Original ipsius M. scit (tali die & anno) p̄d Def. fuit Husbandman put p̄ h̄re illud supponitur Et hoc pet qđ inquiratur p̄ Patriam (&c.)

Vide 2 Mod. Intr. 12. Quod Def. de Beom & traverse quod est Gen. Pl. Gen. 4.

Quod Def. est cognus per nomen T. Sed Et
traverse quod est cognus per nomen. T. Broker.
Rob. Ent. 91.

Quod Hroz per Maritag amittit nomen
Dignitatis. 1 Bro. 3.

Quod Def. est Sed & non Medicine
Doctor. Clif. 16.

Quia partes sunt filie M. & non ejus
Sopores. Idem 22.

If a Man pleads, that he had another Addi-
tion than is given him, he ought to say, The
Day of the Writ purchased. 11 H. 6. 11. a.

Et p[ro]p[ri]us Tenens, dicit quod p[ro]p[ri]us Petens est
Miles & fuit die impetrat[ur] h[ab]ere p[ro]p[ri]us An-
de ex quo idem Petens non no[n]iatur
Miles in h[ab]ere p[ro]p[ri]us idem tenens per Ju-
diciu[m] de h[ab]ere illi, &c.

Tenant
pleads, That
the Deman-
dant is a
Knight.

Et p[ro]p[ri]us A. p[ro]p[ri]us J. S. Attor[ne]um suum veni &
per auditum p[ro]p[ri]us h[ab]ere de Sed fac
us e[st] impetrat Et ei legitur (&c.) Quo
& audito idem A. per Judic de h[ab]ere
quia die quod ip[s]e idem A. die emanat
h[ab]ere de Sed fac non fuit Baronet-
us put p[ro]p[ri]us h[ab]ere p[ro]p[ri]us superius supponitur
et hoc parat est verificare Unde ex quo
A. p[ro]p[ri]us h[ab]ere nominatur Miles & Ba-
ronettus idem A. per Judic de h[ab]ere
&c.

For that the
Defendant
was no Baro-
net, but only
Knight, &c.

See Rast. 108, 298, 570. Ast. 2. Reg. Pla-
287. Cl. Ass. 1. Def. est Baronettus
non Miles. 1 Vent. 154. Clif. 17.

Def. dicit quod ip[s]e die impetrat h[ab]ere
p[ro]p[ri]us fuit commorans & consilans
quod B. in Comd A. Absq[ue] hoc quod ip[s]e
G
un-

Pro non com-
morant.
Vide ante Mis-
nomer & Mis-
prison.

unquam fuit commorans seu conſans
apud B. pñ put p bñ pñ ſupponitur
Et hoc (Ec.) Unde petit Judicium de
bñi illo, Ec.

Vide 1 Bro. 6. Cl. Affist. 13. Hanf. 268.

After Imparlance he ſhall not ſay, that he
was living at another Place; as that where
he is named of D. that he lives at S. without
that, that he lives at D. 31 H. 6. 13.

One of the
Executors
pleads, That
he was of D.
the Day of
the Writ.

In Debt againſt Two Executors; one ſaid
That whereas he is named of S. that he was
of D. the Day of the Writ purchaſed, and
prays Judgment of the Writ; and agrees
That if the Plea was found for him, that the
Writ ſhould abate againſt both, and yet the
other ſhall answer; but the other Plea ſhall be
firſt tried. 21 Hen. 6. 4. Raſt. Ent. 108, 298,
298, 299, 160.

How the De-
fendant ought
to give the
Plaintiff a
better Writ.

It is ſaid, That when a Man pleads
Abatement, he ought always to give the Plai-
tiff a better Writ, as in Ejectment, for For-
Acres of Land in S. The Defendant pleads
That in S. there are Three Villis, (viz.) A. B. C.
and becauſe the Plaintiff does not ſhew
which of the Villis the Land lies, demands
Judgment:

And the Plea was adjudged ill, becauſe of
Imparlance; and he does not ſhew in which
of the Villis the Land lies. Yelv. 112.

And in ſuch
Caſe the other
ſhall be abate-
red.

And where the Defendant pleads Mat-
which gives the Plaintiff or Demandant a bet-
ter Writ, it ſhall abate the other, as in a Writ
of Ayel, Seisin of the Father; ſo in Mort-
ceſter, his own Seisin, &c.

But in *Formedon* or Writ of *Right, Darrein In Formedon*.
Seisin is no Plea; for in *Formedon* the Gift, and
 not the *Seisin*, is the Title, and it is not with-
 in the Statute of 32 H. 8. of *Limitations*, to be
 brought within Fifty Years, 12 Eliz. Dyer 290.

4 Ed. 4. 32. b.

Note, The Rector of D. shall not be allowed By a Rector
 to say, He was commorant at B. because he
 shall be intended to be always resident upon
 his Benefice. 11 Co. 7. b. 10 H. 6. 8.

One sued as Executor, after Imparlance shall
 not say, that he is Administrator and not Exe-
 cutor. 36 H. 6. 17. 32 H. 6. 32. 9 Ed. 4. 42.

See *Rast.* 108, 126, 160, 298, 300, &c.

9thly. By Abatement for Non-tenure, &c.

Et p̄dict' Thomas p̄ P. C. Attor̄m
 suum venit & defendit jus suum
 quando, &c. Et dicit qd̄ ip̄e non possit
 Manerium p̄dictum cum p̄tine ut dotem
 p̄dictae Alicie reddere quia dicit qd̄ ip̄e
 non est inde tenens ut de libero tene-
 mento nec fuit die impetraconis h̄is p̄d-
 ictae Alicie seu unquam postea Et hoc parat
 se verificare Unde petit iudicium de
 p̄dicto p̄dicto, &c.

For that the
 Defendant
 was not Te-
 nant of Free-
 hold at the
 Time of the
 Writ.

Et p̄dicta Alicia dicit qd̄ h̄e suum p̄d-
 ictum Manerium p̄dictum cassari non debet Quia
 dicit qd̄ die impetraconis h̄is sui p̄dictae
 fuit vicesimo secundo die Martii Anno
 Regni Dñi Regis nunc septimo p̄dictus
 Thomas fuit tenens ut de libero tene-
 mento de Manerio p̄dicto cum p̄tine
 aut p̄dictum suum p̄dictum supponitur Et hoc

Replication
 and Issue.

Venire Fac.

pet qđ inquiratur p priam Et pđ The-
mas silitur Ideo pcept' est Dic qđ De-
nire fac hic in Octab Scđ Trid rii, Et
p quos (Ec.) Et qui nec (Ec.) Ad re-
cogn (Ec.) Quia tam (Ec.)

Vide Clerk's Assist. 8. Bro. Vad. Mec. 459.

Dower against Two, both plead Quod
tenet in sepalitate de parte Et ad res
sepatim pfit' non tenure & Demure inde
Rob. Ent. 267.

In a *Præcipe quod reddat* against Two, if one
plead Non tenure, and the other accept the
entire Tenancy upon him, the Writ shall abate
only against him that pleads Non-tenure, and
shall stand against the other. 22 *Edw.* 4. 4.
Rast. Entr. 365.

At the *Grand*
Cap. return'd,
Two plead
Non-tenure
to the Writ,
the Third
takes the en-
tire Tenancy
upon him,
and gages
Law.

¶ **E**t modo hic ad hunc diem veni-
t' pđ A. p C. W. Att' suum qđ
dix' B. C. & D. p W. C. Attorū suū
Et Dic' modo mand' (Ec.) Et pđ B.
D. dicunt qđ ipd pđ 40 acē terre cum
ptin' pfaē A. reddi non possunt quia
die qđ ipd non sunt inde teneū ut de
hero teūto nec fuer die impetrac' h'et
Orig' pđ A. nec unquam postea Et h'
(Ec.) Unde pet' Judic' de h'yd ille (Ec.)
Et pđ C. dic' qđ ipd est solus teneū
teūtoz pđ cum ptin' & fuit die impetra-
com' h'is pđ & semper postea Absq' h'
qđ pđ B. & D. eod' die impetrac' h'
pđ seu unqm postea aliquid huer in
dem Et hoc (Ec.) Et die qđ defalc' p
sibi in hac parte nocere non debet quia
die qđ ipd nunqm sum, (Ec.) In Dower

Vide 1 Bro. 202, 205. Rob. Ent. 246, 267. In Formedon, 2 Bro. 164.

See 1 Lut. 37, &c. in Formedon in Discender, &c. the Defendant pleads Non-tenure to Part; and to the other Part, that the Demandant had entered, &c. Repl. as to the First, That he was Tenant, &c. and Demurrer to the Residue, and Judgment for the Demandant, because that the last Plea was repugnant, and also for that no Time of the Demandant's Entry is alledged. In Formedon Non-tenure plitat in Abatement post Imparl Plaintiff reply, Quod Tenens ante impetrac^o Orig^{is} Enfeoffavit divers^{os} pson^{as} incognit^{os} p fraudem Et qd^o notie non heret de nobis psonar^{um} vers^{us} quas h^{ab}e^{re} su^{um} de Formedon in Discender impetr^e.

Quod Tenens continue Exit^{us} & p^{ro}ficua recepit p quod p Statut^{um} existend^{um} p^{er}no^z res p^{ro}fits Tenens adjudicari debet. The Tenant demurs, 3 Lev. Rep. 52.

In h^{ab}d de Record, 1 Bro. 313, 314, Alia, non tenure plitat^{ur} Et si, &c. plitat^{ur} de unguis seissie Et si, &c. nul tort. Rob. Ent. 128. In Waste Disclaimer by one, the others pleaded, Quod tenent conjunctim cum R. & D. per Cartam J. plac^{et} in Cur Repl^{et} quod Def. sunt soli Tenens Et traverse qd^o alii aliquid herent & scire fac^{ere} ad manutenend^{um} conjunctim tenentiam. Plit. Gen. 120. Vide Rob. Entr. 134.

See *Rast.* 66, 111, 142, 233, 275, 276, 281, 282, 363, 364, 440. *Ast.* 10. 258.

Not after Impar-
lance to be
pleaded.

It is said, That in a Plea of Land, after a general Imparlance, one shall not have the View: So he shall not plead Non-tenure or Jointenancy, 4 *Eliz.* *Dyer* 210. *b.* But see 26 *H.* 8. 2. But in a *Præcipe* against Two, if one imparl, the other may demand the View. 22 *Ed.* 4. 24.

Summons and
Severance,
and Death
abates

If there be Two Jointenants, and the one is summoned and severed, and dies, the Writ shall abate; but in a *Scire Facias* it shall not. 10 *Co.* *Read* and *Redman*.

Where Death
shall not
abate after
Summons and
Severance.

In all Actions, Personal and Mix'd, where the entire Thing is to be recovered, as in *Quare Impedit*, Detinue of Writings, &c. there (after Summons and Severance) the Death of one shall not abate the Writ. *Ibid.*

Neither after
Judgment in
Personal
Actions.

So the Death of one after Judgment in Personal Actions shall not abate the Writ, altho there be no Severance. *Ibid.*

Nor where
the Writ goes
in Discharge.

Also where the Writ goes in Discharge, as an *Audita Querela*, and the One is summoned and severed, and dies, the Writ shall not abate. *Ibid.*

It is no Plea to the Writ to say, That the Summons were of other Lands; for the Defendant may wage his Law *de non Sum.* 37 *H.* 6. 26

Where the
Defendant
ought to an-
swer over.

If the Defendant pleads Non-tenure to Parcel, he ought to answer to the Residue: Or if one Defendant plead Non-tenure, the other Tenant or Defendant ought to answer, and

the Writ shall abate only for that Part to which Non-tenure is pleaded. *Stat. 25 Ed. 3. 5, 13, 16.*

But if the Demand be of a Manor which is entire, Non-tenure of Parcel shall abate the whole Writ. *1 Com. 205. a.*

But for the Pleading of it in several Actions, and when the Receipt of the Profits shall make a Tertenant. *Vide 22 Ed. 4. 4. 4 Ed. 4. 4. Stat. 7 H. 7. 5. Rast. Entr. 66, 111, 230, 232, 275, 281, 363, 440, 589. Co. Entr. 219, 312, 324, 325.*

ET p̄d A. p̄ C. f. Attornd suum veni
 & dic qđ ipse p̄d A. p̄fat' h. dotem
 suam de eisdem tētis cum p̄tin red-
 dere non potest quia dic qđ ipse non est
 inde tenens ut de libero tēto nec fuit
 die impetracon h̄is Original ipius h.
 nec unquam postea Et hoc parat' est
 verificare Unde pet' Iudicium de h̄e-
 ti ill, (Ec.) *Aliter in Dower.*

Et p̄d h. dic qđ p aliqua in eodem
 plito p̄allegat' h̄ebe suum p̄dict' cassari
 non debet quia dic qđ die impetracon
 h̄ebis Original ipius h. scilicet 27 die
 April Anno regni Dñi Regis nunc
 scabo p̄d A. in iure suo p̄p̄d fuit tenens
 tētozum p̄d cum p̄tin ut de libo tēto
 put p̄ idem h̄ebe supponitur Et hoc pet'
 qđ inquiratur p̄ p̄iam (Ec.) *Repl. Quod est tenens.*

Note, That in Dower upon a Plea of several Tenancy the Writ was abated. 1 Lut. 11. Vide 1 Bro. 267. Defendant pleads that he is Tenant in Severalty.

The Defen-
dant pleads,
That the Te-
nements de-
scended to
his Father,
who is yet
living, &c.

Et p^r h. S. p. C. D. Henric^{us} & E. p.
gen^{er} qui p. Cur^{iam} D^{omi}nⁱ Regis hic admini-
strant ad Def. p. eodem h. infra etat^{em} exi-
st^{en}t ut Guardian^{em} ipsius h. ven^{it} & die
q^{uo}d ip^se p^{ro}fat^{ur} Anne dotem suam de ten-
tis p^{ro} cum p^{ro} reddere non potest quia
die q^{uo}d p^{ro} C. S. quondam Vir p^{ro} Anne
& Abus p^{ro} h. modo Def. post dispon^{en}-
t^{em} ip^sum C. S. Abum & p^{ro}fat^{ur} Annam
celebrat^{ur} fuit seist^{us} de ten^{en}tis p^{ro} cum p^{ro}
in D^{omi}nico suo ut de feodo Et sic inde se-
ist^{us} exist^{en}t idem C. S. Abus postea
ante diem impetrat^{ur} h^{ab}is Original^{em} p^{ro}
A. apud A. in Com^{itatu} p^{ro}dict^{us} obiit de tali
Statu suo inde seist^{us} post cuius mortem
ten^{en}tia p^{ro} cum p^{ro} descendebant cuidam
h. S. Patri ipsius h. S. modo Def. m^{at}r
fil^{ius} & heres p^{ro} C. S. Abi p^{ro} q^{uo}d idem h. S.
pat^{er} & die impetrat^{ur} h^{ab}is Original^{em} p^{ro}
A. fuit & adhuc est seist^{us} de ten^{en}tis p^{ro}
cum p^{ro} in D^{omi}nico suo ut de feodo Et
sic idem h. S. filius die q^{uo}d ip^se non est
inde tenens ut de l^{it}o t^{est}o nec fuit die
impetrat^{ur} h^{ab}is Original^{em} p^{ro} A. Et
hoc parat^{ur} est verificare Unde pet^{it} Ind^{em}
h. p^{ro} A. Dotem suam de ten^{en}tis p^{ro} cum
p^{ro} hoc Casu de eodem h. S. filio ha-
bere debeat, &c.

Quer^{itur} Repl^{et} q^{uo}d Def. est tenens ten^{en}-
tor ut de l^{it}o t^{est}o, &c. Et ex^{it} inde.

For that the
Plaintiff was
Tenant in
Common at
the Time of
the Trespass.

ff. **E**t p^{ro} Def. di^{cit} q^{uo}d p^{ro}dictus Quer^{itur}
p^{ro} tempore quo supponitur C^{on}st^{at}
p^{ro}dict^{us} fieri nichil h^{ab}uit in p^{ro}dicto Messua-
gio (&c.) de novo assign^{atus} nisi in comuni
cum p^{ro}fat^{ur} J. G. qui modo superstes & in
plena

plena vita existit videlicet apud D. pdia'
Et hoc (Ec.) Unde ex quo pdia' J. G.
non nominatur in h2d pdia idem Def.
petit Judicium de h2d illo, Ec.

Cassari non quia die qd ipsa est & Repl.
tempore Cnlgre p3 face fuit sola seist de He was sole
pdia' Messuagio (Ec.) de novo Alignd Tenant.
cum ptid in Dico suo ut de feodo Absq
hoc pdia' J. G. tunc aliquid fuit in
eodem Messuagio (Ec.) cum ptid de
novo Alignd Et hoc pef qd inquiratur
per Patriam (Ec.)

Vide Hans. 103. Thomps. 12.

In an Assize it is a good Plea to the Writ
to say, That the Plaintiff was seised of the
Freehold of the Lands in the Pleint; but in
forcible Entry it is no Plea to say, He was
seised the Day that the Writ was purchased.
H. 7. 41.

If *Non-tenure* be pleaded the Day of the
Writ purchased, it is not sufficient, for he must
say, nec unqund postea. 37 H. 6. 16. Vide
H. 6. 22. 3 H. 7. a. But in Jointenancy
need not say, nec unquam postea. Bro.
fol. 99.

If one plead *Non-tenure* of Part, he ought
to shew who is Tenant of the Residue. Other-
wise, where he pleads *Non-tenure* of the Whole,
less it be for a Rent, and the Land is not
a Thing in Demand.

Where the
Defendant
ought to shew
who is Te-
nant to the
Residue.

In Debt upon a Lease, *Non-tenure* is a good
Plea, without more saying. 4 H. 6. 5.

In Debt upon
a Lease.

After a *Prece partium*, the Defendant shall
plead *Non-tenure*. 9 Ed. 4. 31. 20 H. 7. 14.
21 Ed. 4. 51.

After *Prece
partium*.

In

Where such
Plea is pe-
remptory to
the Tenant.

In a *Precipe quod reddat*, if the Tenant pleads *Non-tenure* or Jointenancy, or other dilatory Matter, it is peremptory to him, and he shall lose the Land. 5 E. 4. 74.

So if a Plea after the last Continuance found against the Tenant, it is peremptory and not dilatory; but Pleas dilatory generally are not peremptory. 5 Ed. 4. 139. 21 Ed. 4. 25.

Where the
Tenant ought
to shew of
what Feoff-
ment.

At Common Law, he that pleads Jointenancy ought to shew of what Feoffment. 28 & 29 H. 8. *Dyer* 32. a. and by 19 H. 6. If one plead Jointenancy on his Part, he ought to shew of what Feoffment: But it is otherwise if he plead Jointenancy on the Part of the Demandant.

If Tenancy in Common be alledged on the Part of the Plaintiff by the Defendant, he need not to shew how. *Vide Fitzb. Abr. fol. 2.* But it is otherwise of Jointenancy, or *Part divisio ex parte Defendantis*. 22 H. 6. *Vide* 15 H. 7. 9.

If the Defendant in Trespass plead, that the Plaintiff holds in Common, he ought to shew how; for it may be by several Means, by Alienation of Copartners or Jointenancy, and therefore ought to be certainly expressed in Pleading.

Upon a *Scire facias* against Tertenary they plead in Abatement that one of them was not summoned, whereupon a *Scire facias* was awarded against him; upon *Scire facias* returned, a *Respondi ouster* was awarded. 2 Saund. 8. *vide* 2 Vent. 103. *est al Tenens non Sund. Vide ante.*

Jointenure pleaded.

Et p̄ Def. p̄ (Ec.) Attoꝝ suum
 veni & Defend vim & injur' quan-
 Ec. Et quoad venire Vi & Armis
 Ec.) non cul' (Ec.) Et quoad residu
 transgr' p̄d superius fieri suppoit idem
 Def. pet' Judicium de villa illa quia
 quod clausum & domus p̄d' nec
 in loci in quibus supponitur t̄nsg' p̄
 superius fieri sunt & p̄dicto tempore
 Ec. fuer' tria Messuagia & sexa-
 nt ac' terr' cum ptin' in R. p̄d'ia'
 mod' p̄d'ia' Quer' p̄dicto tempore quo
 ponitur t̄nsg' p̄d'ia' superius fieri
 nihil fuit in eisdem tētis nisi insimul
 p̄ indiviso cum quodam J. W. qui
 huc superstes & in plena vita existit
 dest apud R. p̄d'ia' Et hoc (Ec.) Un-
 ex quo p̄d'ia' J. in villa p̄d'ia' non
 minatur Idem Def. pet' Judicium de
 villa illa & quod villa illa cassetur, Ec.

For that the
 Plaintiff at
 the Time of
 the Trespass
 was Jointe-
 nant with
 another not
 named.

Note, If Jointenancy be pleaded by the
 Def. ex parte Quer' 'tis not necessary to
 shew how; but when 'tis pleaded ex parte
 Def. he ought to shew how particularly.
 Cro. 590.

And so of Tenant in Common. See *Rast.*

Et p̄d'ia' Quer' dicit qd villa sua p̄d'
 L' racione p̄allegat cassari non debet
 quia dicit quod etiam & domus p̄d'ia' nec
 in loci in quibus t̄nsg' unde se modo
 queritur

Repl.
 And New
 Assignment.

queritur fact' fuit sunt & dco tempo
quo, &c. fuer' tria Messuagia & centum
& quadragint' acr' terre in P. Cond
vocat' (&c.) at qm' pd' tria Messuagia
sexagint' acr' terre in Narracone pd' De
superius spec' Et hoc (&c.) Unde
quo pd' Def. ad tñsgr' in eisdem Mess.
centum & quadragint' acr' terre superius
de novo Assign' fact' nō respond' Ideo
Quer' petit Iudic' & dampna sua occu
tñsgr' illi sibi adjudicari, &c.

Vide simile Clift 23. ff. Quod quer' in
chil fuit in Messuag' de novo assign' in
in Cod cum P. Rept quod Quer' est solus
señ Et traverse quod P. aliquid h
1 Bro. 8. simile Hans. 103.

See for Precedents, *Rast.* 62, 66, 80, 18
139, &c. *Co. Ent.* 41, 317. *Thomps.* fol.
numb. 11. 1 *Brown.* fol. 8. numb. 36, &c.

Note, That in *Formedon* against divers; for
plead *Non-tenure*, and others take the Tenan
cy upon them entirely, the Tenancy shall be
abate, and those that plead *Non-tenure* shall not
have Judgment. 22 *Ed.* 4. 4. 4 *Ed.* 4. 33.
Stat. 25 *Ed.* 3. 12.

**Non-tenure
or Jointenan-
cy after Im-
parlance.**

Note, It has been held, That after Impar
lance one may plead *Non-tenure* or Joint
nancy. 9 *Ed.* 4. 36. 20 *H.* 7. 14. but it seems
have been intended a Special Imparlance. 4
4 *Eliz.* *Dyer* 210. after a General Imparlance
one may not plead *Non-tenure* or Joint
nancy.

**Where one
Tertenant
cannot plead
in Abate-
ment.**

If a Conusee in a Statute sue Execut
against one Tertenant alone without the other
he cannot plead in Abatement, but is put

his *Audita Querela* against the other: For that the Conusee is not bound to take Notice of all the Tertenants. 16 *Eliz. Dyer* 331, 332.

In Trespafs against Two, one pleads, That the *Locus in quo*, &c. is within the Fee, and demands Judgment of the Writ *Quare Vi & Armis*, the Writ shall abate against him only. One pleads the *Locus in quo*, within his Fee.

where one is Feme Covert, Jointenancy the Demandant or Coparcener shall be abated in Abatement. 22 *Ed. 4. 4. 2 H. 7. 16. 10. Eliz. 554. Rast. Ent. 615.*

In a *Præcipe* after Jointenancy pleaded with a Stranger, the Defendant in another Writ shall not plead *Non-tenure*; because by the former Plea he had affirmed himself Tenant: Where Non-tenure shall not be pleaded after Jointenancy. If the first Writ had been brought against the Husband alone, and the Second against the Husband and Wife, the Wife may plead *Non-tenure*, because she was a Stranger to the former Action. 33 *H. 6. 2, 3.*

So in a *Præcipe* against Two, one pleaded Jointenancy; he that pleaded Jointenancy shall abate the first Writ, shall not to the second Writ against both plead the same Jointenancy alone; but he and his Companion may plead the same Jointenancy, because his Companion is a Stranger to it. 19 *Hen. 6. 32.* Where one may not plead Jointenancy upon the second Writ.

Jointenure and Non-tenure.

D Et venit (&c.) Et quoad tria Messuagia, (&c.) parcell p̄dia' For that the Defendant is Jointenant of Part. s̄s idem def. dicit qđ ipse tenet & die petraconis brevis originalis p̄dia' et tenuit eadem tria Messuagia & sex reddit cum p̄t̄m conjunctim cum &c. *Ux'*

See for Prece-
dents, *Rast*
276, 362, 386.
Aston 10. 325.

And Non-te-
sure of the
Residue.

Ux' ejus adhuc superstita & in plena
eristen ex Dono & Feoffamento C.
(Ec.) eidem Def. & E. per nomi-
(Ec.) & heredibus de corporibus cor-
dem Def. & E. erēcun p noia omni-
terrar (Ec.) cum ptin in A. factis Ux'
ex quo eadem E. non nominatur in b
vi p'dia' per Judicium de h'z illo,
Et p'fert hic in Cur alteram partem
jusdam Scripti indentat sub noia
p'dia' C. B. (Ec.) fac' que conjuncta
tenentiam p'dia' in forma p'dia' testat
cujus dat est apud P. (tali die)
quoad resid' ten'toz p'd' unde p'dia' C.
clamat terciam partem ut dotem ipse
quer idem Defend' dicit q'd ipse tercia
partem eorundem ten'tozum resid' p'd'
quer reddere non potest Quia dicit
ipse non est tenens resid' illius ut
libo ten'to neque perceptoz p'dia' red-
tus neque tenens ten'toz unde suppo-
tur redditum illud pervenire nec
die impetraconis brevis p'dia' Et
(Ec.) unde quoad terciam partem cor-
dm ten'tozum resid' per judicium de b
p'dicto, Ec. Vide 2 Mod. Intrand. 16.

Sole-Tenure pleaded.

For that the
Defendant is
and was sole
Tenant.

N. E C p'd' A. & B. dic' q'd p'd' C. se-
tem p'd' habere non debet quia p
A. dic' q'd ipse est tenens ten't p'dia'
pertin' usus ipm & p'dia' B. peti-
de libo ten'to & fuit die impetrac
Original p'd' C. & semper postea
hoc quod p'dia' B. tunc vel postea

id fuit in eisdem Et hoc (Ec.) unde
et Judic de brevi illo, Ec. Et ulterius
qđ ipse nunquam sum fuit scđm Le-
m terre (Ec.) Et pet se ad Regem
am de integro tenē pđia' faciendū ad-
tti, Ec. Et pđia' B. dic quod ipse est
egre tenens tenementorum pđia', Ec.
supra.

*Et nunquam
fuit Summ. &c.*

Et pđ C. quod ipse a seiscina habendū
de tenē pđia' cum ptin per allega-
pđia' repelli non debet quia dic qđ
impetraōnis brevis Original sui
licet (Ec.) pđia' A. & B. fuer tenend
torum pđia' cum pertin ut de liho
to in Cōi prout per breve suum pđ
ponitur Et hoc pet qđ inquiratur
přiam Et pđia' A. & B. similiter
pro, Ec.

Repl.
That he was
Tenant in
Common.

*Vide 2 Bro. 42. See Rast. 221, 272, 273,
364, 365, 419, &c.*

hly. By Abatement for Things done after
the Original purchased.

Dicit quod pđictus quer post diem
impetraōnis brevis Original
scilicet (tali die & anno) apud R.
Com L. per quoddam scriptum suū
quietant quod idem Def. sigillo pđia'
signat hic in Cur profert ejus dat
eisdem die & anno per nomen (Ec.)
se recepiss & huisse die confectō
idem scripti de ipso Def. p nom (Ec.)
tuti librar in partem solutionis cu-
m Obligaōnis majoris summe in
qua

For that the
Plaintiff dis-
charged part
of the Debt
after the Ori-
ginal purcha-
sed.

qua idem Def. eidem quer tenebatur
quibus quidem 20 l. idem quer fatebatur
se fore solut ac ipsum Def. & Cuto
suos inde fuisse quiet per id scriptum
Et idem Def. die qd pda 20 l. in pda
script acquietane spec su parcell pda
Centu lib in pda pda ipsius quer contentat
Et hoc (Ec.) unde pet de iudic brevi illo, Ec.

Repl.
That the Ac-
quittance was
for another
Debt.

Traverse.

Cassari non debet quia die qd pda
Def. ante tempus concessum
scripti pda p quoddam aliud scriptum
suum Obligatoriu gerens dat (tali
& anno) Obliga fuit eidem quer in
Cent lib solvend eidem quer super
cessum quartum diem Junii tunc
sequen de quibus quidam aliis Cent lib
idem quer recepit de pfa Def. 20 l.
inde fecit pda scriptu acquietane ab
hoc qd idem quer fec pda Scriptu acqui-
tane pfa Def. in partem soluconis
denar in pda script obl in Pare pda
spec prout pda Def. superius alleg-
bit Et hoc (Ec.) unde pet Iudic
debm suu pda unacum dampnis (Ec.)
sibi adjudicari.

Issue upon
the Traverse.

Et pda Def. die qd pda Quer fec
Script acquietane eidem Def.
part soluconis pda denar in dicto scrip
obligat in dicta Pare pda superius
spec put ipse superius allegabit Et
hoc pon, Ec.

Et p^r Def. p W. T. Attor^um suum
ven^t & Defens^um vim & injur, &c.
Et petit Judicium de Villa p^rdia' quia
dicit q^d p^rdia' G. H. post ultimam con-
tinuacion^{em} Ville p^rdia' videt post diem
Partis p^ror' post Quinden^{em} Sed Mar-
mi ult^r p^rterit de quo die loquela p^rdia'
continuat^{ur} hic usq^{ue} ad hunc diem scilicet
(&c.) sup^rradia' per quandam billam
quam acquietanc^{em} quam idem Def. sigil-
latus ipsius G. sigillat^{ur} hic in Cur^{ia} p^rofert
cujus dat^{um} est eidem die & anno sup^rra-
dictis cogn^{itum} se recepisse de eodem Def.
quingagint^{as} libras in parte soluconis
majoris summe debet^{ur} eidem G. per
scriptum suum obligatorium p^rdia'
et ulterius idem Def. dicit q^d Scrip-
tum obligatoriu^m p^rdia' hic in Cur^{ia} p^ro-
fert & p^rdia' Scriptum obligatoriu^m in
p^rdia' Villa acquietanc^{em} spec^{ies} sunt unu^m
idem Scriptum & non aliud neq^{ue} di-
versu^m & q^d villa acquietanc^{em} facta fuit
exoneracione quingaginta librar^{um}
marcell^{arum} p^rdia' Centum librar^{um} in narra-
tione p^rdia' superius spec^{ies} Et hoc parat^{ur}
et verificare unde petit judiciu^m de villa
p^rdia', &c.

Aliter.

For that the
Plaintiff gave
Acquittance
for part of
the Debt af-
ter the last
Continuance.

Vide Pl. Gen. 1.

Et petit Judiciu^m de Narracione p^rdi
quia dicit q^d p eandem Narracio-
nem evidenc^{em} apparet q^d Quer^{us} narrat
versus ipsum Def. de transg^{ressione} & Ec-
c^{lesiasticis} p^rdia' virtute cujusdam dimissio-
nis sibi fact^{ae} per p^refat^{um} Lessod^{um} vicesimo
nono

For that it
appears the
Demise was
made after the
Bill exhibited.

none die Novembꝛis Anno (Ec.) supra dicto que quidem dimissio facta fuit post diem exhibitionis ville p̄d ex quo manifeste apparet qđ p̄dicta Quer tempore Narrationis facta nullam Causam Actionis versus ipsum Def. habuit seu fieri potuit de transgre & Ejectione p̄d supin fieri supposit Et hoc, (Ec.) unde per Judicium de Narratione p̄d Et qđ Narratio illa cassetur, Ec. Vide Thomps. 2.

That the Plaintiff released to the Defendant post impetrat h̄is. *Pl. Gen. 5, 6.* For that the Plaintiff receiv'd part of the Debt after the Original prosecuted: *Repl.* That he sold the Defendant Goods for such a Sum de quo recepit parcelle, and traverses quod recepit partem Debi petit. *Vide Rob. Ent. 3. Assist. 10. Reg. Pl. 293.*

That the Plaintiff post impetraconem suscepit Ordinem Militis Balnei & De murr inde. *Vidian 93.*

See for Precedents, *Rast. 30, 106, 107, 163, 334, 365. Ast. 7. Thomps. fol. 2. numb. 1. Brown. 1st part fol. 2. numb. 10. fol. 8. numb. 34, &c.*

Upon Bond,
Parcel received after the
Writ purchased.

Note, That in Debt upon Bond, if the Defendant plead that after the Writ purchased the Plaintiff had received Parcel, and showed an Acquittance, the Writ shall abate the Whole, and notwithstanding it is a good Plea in Bar for that Part.

Part paid upon a simple Contract.

But it is made a *Quære*, If in Debt upon simple Contract, the Plaintiff receives Parcel pendente brevi, the Writ shall abate. *5 Hen. 7. 81. a. 7 Ed. 4. 19. 15 Hen. 7. 3 Hen. 7. 3. Rast. Ent. 160.*

done after the Original.

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But in Debt upon Bond with Condition to deliver Twenty Quarters of Barley, the Defendant pleaded in Abatement, that pendente Billa the Plaintiff had accepted Fifteen, Parcel of the Twenty, and it was adjudged to be an ill Plea, because it is collateral, and not Parcel of the Sum contained in the Bond. Co. 253.

Payment by
a collateral
Thing.

See after at the latter End, what Things may be pleaded after the last Continuance, and how.

nthly. Abatement, for that another Action is depending.

Quoad part' Def. plead non debet p
patriam Et quoad 16 l. resid' quas
dia' A. B. qui tam, &c. versus ipsum
J. S. pro ejus exercitacione & usu artis
posterii sibi manualis occupacione Bar-
tonsozis pdia' per octo menses postea
post pdia' duodecim mensium in Billa
dia' A. B. pdia' mentonat idem J. S.
Judic' de Billa ille quia dicit qd (tali
&c. anno, &c.) vendit hic in Cur' qui-
am W. S. qui tam p Dno Rege qm
seipso in ea parte sequitur per H. P.
torum suum ac tam p dicto Dno Rege
p seipso in ea parte sequitur p H. P.
torum suum ac tam p dicto Dno Rege
p seipso exhibuit in eadem Cur' hic
andam billam suam versus pfat' J. S.
custodi Marit, &c. de placito debi
invenit pleg de prois scilicet J. D. &
J. S. per quam quidem billam predia'
J. S. qui tam, &c. querebatur de eo-
dem

Quoad part'

Non debet

quoad 16 l.

Defendant
pleads a for-
mer Bill by
another yet
depending.

dem J. S. in custodiā Marr Marese die
 Regis coram ipso Rege ut p̄fertur ex
 ten de placito quod redderet dicto
 Regi nunc & p̄fat W. S. qui tam, &
 16 l. leglis monete Angl̄ quas die
 Regi nunc & p̄fat W. S. qui tam, &
 debuit & injuste detinuit p̄ eo videt
 cum per quendam Actum in Parlia
 ment Dñe Eliz̄ nup̄ Regine Anglie ten
 apud Westm̄ in Com̄ Midd̄x 12 die
 Jan̄ Anno Regni dic̄ nuper Regine
 quinto edic̄ & p̄vis inactitat̄ fuisset
 rhoritate ejusdem Parl̄ Qd̄ post primū
 diem Marti (Ec.) (reciting the Bill or Infor
 mation) Ad dampnum ipsius W. S. qui
 tam, &c. 10 l. Et inde produxit sen
 (Ec.) p̄out per Bill̄ p̄dic̄ in eadem
 Cur̄ hic de Recor̄d̄ assilat̄ residen̄ p̄le
 liquet & apparet Et p̄dic̄ J. S. ultimū
 die qđ ip̄e idem J. modo Def. & p̄dic̄
 J. S. in Villa p̄fat W. S. p̄dic̄ nota
 sunt nū & eadem personā & non al
 diversa, qđq̄ p̄dic̄ Villa p̄fat W. S.
 qui tam, &c. ac p̄dic̄ Villa p̄fat W. S.
 modo quer̄ qut tam, &c. in dea Cur̄
 exhibet sunt vsus eundem J. S. modo
 Def. p̄o uno eodemq̄ offens̄ quoad
 exercitacōn manual̄ occupacōn p̄dic̄
 p̄dic̄ spaciū octo mensium posteri
 p̄o 12 mensium in Villa p̄o W. S. p̄o
 mencōnat̄ resō Et non p̄o aliis neq̄
 vers̄s quodq̄ p̄dic̄ prima Villa p̄
 fat W. S. ut p̄fertur hic in Cur̄ ex
 bit̄ pendet minime discontinuat̄ Et
 idem J. S. parat̄ est verificare unde
 judiciū de Villa p̄fat W. S. Et qđ
 Villa illa cassetur, &c.

Ave:ment.

Et p̄dict' A. B. qui tam, &c. dic' qđ
 Billa ipsius A. qui tam, &c. p̄dict' per
 aliqua per p̄fat' J. S. p̄allegat' cassari
 mid' debet quia p̄testando qđ non hetur
 aliqua tal' billa p̄ p̄fat' W. S. qui tam,
 &c. in Cur' hic versus p̄fat' J. S. exhi-
 bit' prout p̄dict' J. S. superius p̄litando
 allegabit p̄ placito idem A. B. qui tam,
 &c. dic' qđ billa p̄dict' p̄ p̄fat' W. S. versus
 undem J. S. exhibit', exhibit' fuit in Cur'
 p̄ p̄fat' W. S. & p̄dict' J. S. p̄ frau-
 dem & Covinam int' ipsos p̄fat' W. S. &
 J. S. apud Westm' hic p̄ius hit' ad ip-
 sam A. B. qui tam, &c. ab acōne sua
 p̄dict' p̄dict' 16 l. hēd' p̄cludend' Et hoc, (&c.)
 unde pet' Judic' & p̄dict' 16 l. parcel de hi
 & superius pet' dicto Dño Regi nunc &
 A. B. qui tam, &c. adjudicari, &c.

Repl.
 That the for-
 mer Bill was
 exhibited by
 Fraud and
 Covin, &c.

Et p̄dict' J. S. dic' qđ billa p̄dict' per
 p̄fat' W. S. versus ipm J. S. exhibit' ex-
 hibit' fuit in Cur' hic per p̄fat' W. S.
 & ipm J. S. iuste & vere ea intenōne ad
 recuperand' 16 l. de p̄fat' J. Absq' hoc qđ
 illa p̄dict' p̄ p̄fat' W. S. versus ipm J.
 exhibit' exhibit' fuit in Cur' hic p̄ p̄fat'
 J. S. versus ipm J. S. p̄ fraudem & co-
 vinam int' p̄dict' W. S. & ipm J. S. p̄ius
 ad p̄dict' A. B. qui tam, &c. ab ac-
 tione sua p̄dict' p̄dict' 16 l. hēd' p̄clu-
 dend' modo & forma put p̄dict' A. qui
 tam, &c. superius inde replicando alle-
 git Et hoc, (&c.) unde ut p̄ius pet'
 iudicium de billa p̄dict' A. B. qui tam,
 &c. Et qđ billa illa cassetur, &c.

Rejoinder.
 And that the
 former Bill
 was exhibited
 vere & iuste,
 and traverseth
 the Fraud and
 Covin.

Surrejoinder,
and Issue up-
on the Fraud
and Covin.

Et pd' A. qui tam, &c. ut prius dic-
tum quod villa pd' p p'fat' W. S. versus
eundem J. exhibet exhibit' fuit in Curia
hic p p'fat' W. S. versus pdia' J. &
per fraudem & covinam int' ipsos p'fat'
W. S. & J. S. apud W. hic prius
hit' ad ipm A. B. qui tam, &c. ad
actione sua pdia' p pdia' 161. henc p
cludend' modo & forma put pdia' A.
qui tam, &c. superius replicando alle-
gavit, Et hoc idem A. qui tam, &c.
pet' qd' inquiratur p patriam, Et p
dia' J. sicut Ideo, (&c.)

See Vidian 187.

For that there
is another
Writ pending
for the same
Debt.

Et pd' A. p J. B. Attorn suum
nit & petit Judicium de brevi p
dicto quia dicit qd' pdia' C. ante dicta
impetraconis brevis Originalis illius
scilicet (tali Die & Anno) p'secut' fuit
extra Curiam Cancellarie dicti Dni Re-
gis (eadem Cancellaria apud Westm
Com Midd' tunc existend') quoddam
breve dicti Dni Regis de pdicto debui-
ducent' & quadraginta librarum
suis ipsum A. p nomen A. R. nup-
de A. Armig alias dia' A. R. de
in Com C. Gen tunc Dic London
rectum per quod quidem breve dic
minus Rex nunc eisdem tunc Dic Lo-
don p'ceperat qd' iidem tunc Dic p-
riperent eidem A. qd' iuste & sine dilao-
redderet p'fat' C. ducent' & quad-
lib' quas ei tunc debuit & iniuste
tinuit ut tunc dixisset, Et nisi fecisset

Et predictus C. fecisset eorundem die secus de
clam suo psequendi tunc sum per bonos
sum predictus A. quod esset coram Justic
dici Domini Regis hic scilicet apud Westm
a die Sed Michis in tres Septimanas
tunc prior sequens ostens quare non fe-
cisset, Et quod iidem tunc die haberent
tunc hic sum & breve illud, Et idem
I. ulterius dicit quod predictus ducent &
quadragint libras per predictum C. versus
patet A. modo petit sunt unum & idem
debitum & non diversa, Quod predictus pri-
mum breve in eadem Curia hic adhuc
pendet minime discontinuat unde petit
Judicium de isto posteriori brevi impe-
trato pendente predicto priori brevi,
Et.

Vide Clerk's Assist. 5.

Defend per Judicium de brevi per
quia dicit quod ante diem impe-
raonis brevis Originalis predicti sci-
et (tali die & anno) per quem persecutus
uit extra Cur Cancell dicti Domini Re-
is apud Westm in Com Middor tunc
existens quoddam al breve dicti Domini Re-
is de debito 30 l. versus ipsum Def
etor coram Justic hic (tali die)
ad quem diem in Cur hic partibus
dicta comparentibus predictus Quer
uper eorundem brevi narrabit versus patet
Def super billa predicta, Et idem Def
ad tunc petit licentiam interloquendi
super (tale res) prior sequens & huius put
er Recor inde hic in Cur residens li-
quet manifeste, Et idem Def ulterius

*Aliter; with
Averment
that the Wri-
tings are the
same.*

dicat quod pendens predicta alio brevi scilicet
(tali die) predicta Quer super villa predicta
modo versus ipsum Def' narrat prout
per Record inde hic in Cur similiter re-
spondens liquet & hoc, (Ec.) Unde per Ju-
diciu de isto posteriori brevi pendens per
priori brevi, Ec. Cum hoc quod idem
Def' verificare vult, (Ec.)

Defendant pleads auter Action pendens
upon a Writ directed to the Sheriff of W.
Repl', That nothing was done upon that Writ
but that another Writ of the same *Teste* was
brought directed to the Sheriff of S. and the
Defendant appear'd to the Writ, and that he
declared thereon. Demurs thereupon, and
Judgment for the Defendant, because the
Action was brought in *Middlesex*, and so the
Plaintiff had falsified his Writ. 1 *Lut.* 33.
Vide 1 *Lut.* 41, &c.

In Trespass against three, they plead another
Action pending against two of them, but
nothing is said as to the other: Judgment for
the Plaintiff, quod recuperet Damna, be-
cause the Plea commenced, and concluded in
Bar, Quod quer tulit prius bre p eodem
de ho, quod adhuc pendet. 1 *Bro.* 6.

Quia actio pendet in eod Banco per
eandem Causa. *Clift.* 2.

Quia alia Villa pendet in trans.
Idem 8, 9, 22.

Quia quer tli Termino psecut fuit
Def' per aliud breve de insult & im-
sonamen, Et unde p Attoz suu quer
bat quod adhuc pendet, Ec. *Bro.* 22.
2 *Mod. Intr.* 14.

In Quare Imp Epus & Clericus
plurimum quod Quer tulit aliud hie vers
Epum tantum quod adhuc pendet, &c.
Repl, Et Demure inde. Winch. Ent. 783.

Upon an Information, the Defendant pleads
that the Informer exhibited a former Infor-
mation against him in the same Court for the
same Offence, Quod adhuc pendet, &c.
Bro. Red. 437.

Upon the Statute of 5 Eliz. that another
Bill was first exhibited p alium p eod offens
que adhuc pendet, Repl quod exhibit
fuit per fraudem, Rej' juste & vere exhi-
bit, and traverses the Fraud, and Issue there-
on, *Thomps. 6.* Simile plitum & Repl
et null tiel Record erit inde, Et dies
ad inferend Record. Idem 148. See
Vidian 187.

Defendant pleads, That the Plaintiff im-
pleaded him in the Mayor's Court of the Ci-
ty of L. for the same, Que adhuc existit
et discontinuat, Repl p nul tiel Re-
cord, Rob. Ent. 222.

See before, Division the 5th, for Default in
the Writ, &c.

See *Robinson's Entries*, pag. 2. *Vide Hob.*
222, 223.

To an Action of Trover or Debt on Bond,
is a good Plea to say, there is another
Action depending in the Courts of *Westminster*
the same Matter: But that there is an
Action in an inferior Court, is not a good
Plea, unless Judgment be given, 5 Co. 62.
In an Action of Trespass after the Plaintiff
has declared, it is a good Plea to say as
above.

It was agreed, That in Trespas, a Replevin depending for the same Cause. is a good Plea, if there be no more Defendants in the Replevin than in the Trespas, 8 H. 6. 27.

A **Quare Impedit** is brought against Bishop, and another as Incumbent: The Defendants plead, that the Plaintiff had brought another **Quare Impedit** against the same Bishop for the same Presentation, which yet depended undetermined, and demands Judgment of the Writ: And it was adjudged a good Plea; but he might have had divers **Quare Impedit**s against divers Defendants *Hob. 138, 139.*

So in Affize of **Darrein Presentment**, is a good Plea to say, that a **Quare Impedit** is depending for the same Presentation *Idem 184.*

See 39 H. 6. 12. as to the Manner of pleading other Actions real or personal. — And it seems, that if in an Action personal the Defendant pleads another Action depending at the Time of the purchasing the last Writ, he need not say that it is yet depending; for the last Writ is abated in Law, notwithstanding the Plaintiff is afterwards nonsuited in the first Writ, 6 Co. *Ferrar's Case*. And thenote the Diversity when the Writ is general as in Covenant, Detinue, Affize, &c. and when the Certainty is in the Court, for then if the Plaintiff is nonsuited in the first before the court, the last shall not abate. And when the Writ is special, and the Thing demanded is specified in the Writ, as in *Precipe quod reddat*, &c.

Note, That where two Actions (tho' of several Natures) depend one upon the other, the Abatement of one is Abatement of both, *Pract. Reg. p. 5.*

But it is said, that where a Man brings an Action for two Things, and it appears that he could not have an Action for the one alone, where the entire Writ shall not abate, but he shall have Judgment for that of which the Action is well brought, and shall be barred for the Residue: But if it appears that he may have an Action in another Form for the other Thing, then the whole Writ shall abate, *1 Co. 45. 3 Cro. Jac. 104. Mo. 281. And 1 And. Rep. 1. fol. 285, 286.* shews where an Overwry, that is made for more Rent than due, shall abate in the whole, and where not.

See for Precedents, *Rast. 62, 65. Co. 50, 59. Hern 2. Ast. 7. 1 Brown. fol. 6. Amb. 27.*

Lastly. By Abatement, for that the Action is ill founded.

Quia dicit quod p̄dica' Def' simul cum quodam P. S. de (Ec.) tali die & Anno supradicta' tent & obligat per prefat R. p̄ predium Scriptum obligatorium in p̄dica' ducentis libris solvend' eidem R. cum inde requisit esset & ad eandem soluconem p̄dica' (le Def') & P. S. obligaverunt se p̄ idem Scriptum put per Scriptum p̄dica' hic Cur platum plene apparet, Et idem Def' dicit qđ ipsi non obligaverunt ipsos conjunctim sine p̄dica' P. prefat R.

For that the Defendant bound himself jointly with another who is not named.

R. per pdia' Scriptum obligatoriu',
quia idem P. S. in Villa pdia' no-
minatur idem Def' per Iudiciu'
Et quod Villa illa cassetur, &c.

For that the
Bill is in Case,
and ought to
be in Ac-
count.

¶ **E**t pdia' C. D. per J. G. Attor-
suum veni & defend vim & ini-
quando, &c. Et petit Iudiciu' de Vi-
lla pdia' quia dicit quod per Villam pdia'
apparet, Quod pdia' C. D. om-
nibil existit virtute pmissionis & assump-
tionis in dicta Villa mencionat in placito
Comp ut Ballivus ejusdem C. D. testatur
Et p co qd Villa pdia' est in placito
transgr super Casum pdi C. petit Iudiciu'
de Villa pdia', Et qd Villa illa
cassetur, &c.

For not coun-
ting right up-
on a Reverter.

¶ **E**t pdia' G. H. per (Ec.) Attor-
suum veni & petit iudiciu' de
breve pdia', Quia dicit qd pdia' Martini
tempore mortis pdia' C. S. fuit coop-
ta de pdia' R. H. Gen modo viro suo
Ita qd jus Tenementorum pdiaorum
quod, &c.) eidem R. & M. in iure ip-
sius M. revertebatur, In quo Casu
iidem R. & M. p idem breve suppone-
debuissent qd tenta pdia' cum p-
vertebantur iidem R. & M. in iure ip-
sius M. Et hoc parat est verificare unde
petit iudiciu' de brevi pdia', &c.

Et p̄dict' Def' p̄sens hic in Cur' in
prop̄ personā suā defendi vim & in-
jur quando, &c. Et p̄t̄ iudiciū de
Billa p̄dict' modo versus eū exhibet
quia die q̄d p̄ eandem Billam apparet
q̄d p̄dict', Quer queritur de duabus se-
perat & distinct' transgr̄ penden' super
duos seperatos titulos ad duo seperat
& distinct' Offic' Ubi p̄dict' Quer p̄ eis-
dem transgr̄ duas Billas respective ex-
hibere debuisse & non unam Billam
eodemmodo p̄ ambabus Causis Accōn
p̄dict' insimul, Et hoc parat est verifi-
care, Unde ex quo idem quer duas Cau-
sas Accōn in unā eademq̄ Villa non
conjugend' superius conjunxit idem
Def' p̄t̄ Iudic' de ead' Villa, &c.

For that the
Plaintiff de-
clares of two
several Tres-
passes depend-
ing upon two
several Titles
in one and the
same Bill.

Where it appears by the Plaintiff's own
shewing, that he had no Action for the Whole,
or for Part, the Writ shall abate *de facto*, as
Quare Impedit; where it appears by
the Plaintiff's shewing, that the Church is full
by his own Presentation, the Writ shall abate
de facto,— 4 Ed. 4. 32. 2 H. 7. 16.

Et p̄dict' B. p̄ C. D. Attorū suū
venit & Defend vim & injur quan-
&c. Et p̄t̄ Iudic' de Billa p̄dict'
modo versus eum exhibet, Quia die q̄d
per eandem Billam apparet quod p̄-
dict' A. queritur de seperat & distinct'
Causis Accōnis ubi p̄ legem Terre idem
p̄ eisdem Causis Accōn seperat Bil-
las respective exhibere debuisse & non
unam

For that the
Plaintiff de-
clares of sever-
al and dis-
tinct Causes
of Action in
one and the
same Bill.

unam Billam solummodo p omnibus
Causis Accōd p̄dia' insimul, Et
idem B. parat' est verificare unde
quo idem A. plures Causas Accōd
una eademq; Billā non coniungenda
superius conjunxit per Iudic' de eadem
Billā, &c.

See for Precedents, *Rast.* 50, 91, 179, 180,
362, 422, 569. *Hern* 1, 3, 4, 8, 9, 463, 464,
Ast. 5, 6, 7, 339, &c.

Eo quod Billā est in Casu & defo
esse in Compo. 2 Mod. Int. 18.

Quia debum non specificat fuit Com
missionar' scdm Statut'. Clif. 7.

Eo qd Commissionar' recep' denar' com
junctim, Nept qd Def' solus recepit, &
travers' qd recepit conjunct'. Bro. Red. fol.

Quia accō locat' in Com in de ho. Clif.

See before, Division the Fifth, for Defo
in the Writ, &c.

Judgments in Abatement.

• Upon Vari-
ance between
the Specialty,
the Plaintiff
does not deny
the Excep-
tion.

Et quia p̄dia' Quer' Excepconem
p̄dia' (que p inspectione) h̄ebis p̄dia'
ratione & Scripti p̄dia' Cur' hic constat
non dedic', Ideo cons' est qd quer' m
capiat p h̄ebe suū p̄dia' sed sit in m
p falso Clamore suo inde, Et qd p̄dia'
Def' eat' inde sine die, &c. Cons' e
etiam quod p̄dia' Defend' recupera
versus p̄fat' quer' dampna sua accō
p̄miss' ad 10 l. eidem Def' p discer
tionē Iustic' hic ad requisitōn suam
mis' & Custag suis in ea parte susten
jurt

iuxta formam Statuti, per Cur hic ad Judgment for
 dicat, &c. (Vide postea), Et vide Defendant
 Reg. placit. 278. Clerk's Assist. 2. 12. Placit. with Costs.
 Gen. 9, 10. & Bro. Red. 259.

Et modo veni tam p̄dia' S. quam Aliter, Upon
 p̄dia' G. in pp̄ personis suis, Et Variance be-
 ia p̄d' S. in quodam Scripto obliga- tween Speci-
 tio, versus p̄fat' G. hic in Cur' plat alty and Writ.
 quod Scriptum p̄dia' G. tenetur p̄dia'
 in p̄dia' viginti libris certo termino
 eodem Scripto content' solvendi nomi-
 tur & vocatur p nomen S. H. de Lon-
 Merchant Taylor & in brevi p̄d' idem
 nominat' & voc' p nomen S. B. (&c.)
 & variatio existit int' p̄dia' h̄e & di-
 scriptum obligatorium sup quo
 p̄to h̄e p̄dia' fuit impetrat', Ideo
 est qd G. nil capiat p h̄e suum
 sed sit in mia p falso clamore suo,
 p̄dia' S. eat inde sine die, &c.

Upon an insufficient Plea in Abatement,
 Quod quer recuperet debum & dampna.
 Judg. 1.

Judicium qd quer nil capiat p h̄e
 insufficiens, Reg. Placitar. 177. Clerk's
 1. 14.

Upon Demurrer to a Plea in Abatement,
 Rast. 102. b.

Et hoc parat' est verificare unde pet
 Judicium de brevi p̄dia', &c. Et
 Abbatisa non cogn aliqua p p̄d'
 Superius allegat die qd ipsa ad p̄e-
 dia'

dia' placitum superius in cassatione
vis p'dia' modo & forma p'dia' plita
necesse non het nec p legem terre tenet
respondere unde per Iudic, Et q
hzebe bonum adjudicetur ac seiscina ad
vocatione p'dia' p defend sufficiens
spons sibi adjudicari, &c.

Judgment for
the Defendant
that the Writ
shall abate.

Quer' in mia'.

Def' sine die.

Et p'dia' E. ex quo p'dia' materia
ipsum superius allegat' quam ip
parat' est verificare sufficiens est in lege
ad hzebe p'dia' Abbatisse cassand' quam
quidm materiam p'dia' A. non deducit
nec ad eam aliquialiter respondi sed ver
fificand' ill' admittere oio recusat, ut p
us per Iudic de hzebi p'dia', Et q
hzebe ill' cassetur, Et super hoc visus
intellectis per Justic hic plitmd p'dia'
ac ceteris p'zmissis superius in eodem
placito spec' videtur eisdem Justic q
idem placitum sufficiens est in lege
hzebe p'dia' cassand', Ideo cons' est qu
idem hzebe cassetur, Et qd p'dia' A. n
capiat per idem hzebe suum sed sit
mia p falso clamore suo, Et p'dia' c
eat inde sine die, &c.

Rast. 160. Defendant pleads, That he
only a Guest in L. and Commorant in T. M
que hoc, that he was Commorant in
Repl', Que ill' fuit Commorant in L.
hoc, &c. Unde per Iudic, &c. Dele
dants demurs.

Defendant
demurs.

Et p'dia' W. S. ex quo materia qua
ipse pallegabit sufficiens est in lege
hzebe p'dia' cassand' qm quidm materiam
W. L. non deducit & ad aliam materiam

ipsum W. L. preallegat idem W. S.
esse non het per legem terre respon-
re per Judic, Et qđ breve pđia ces-
t, &c.

Et pđia W. L. ex que materia pđia Plaintiff joins
ipsum pđia quam ipse paratus est in Demurrer.

ificare sufficiens est in lege ad breve
pđia manutenend, Et pđia W. S.
teriam ille non dedic nec ad eam
qualit respond set verificatō ille ad-
tere omnino recusat per judic, Et
breve suū pđia bonū adjudicet, Et
a W. S. de debito & dampno pđi con-
care, &c. Et quia videte Cur hic

Judgment,
pđia materia p pđia W. L. preal- that the De-
at sufficiens est in lege ad breve suū fendant shall
manutenend aliqua materia per answer over.

a W. S. allegat non obstan dictū
per Cur pstat W. S. qđ ulterius
pond suo periculo sit, &c. super quo
m W. S. per audit Scripti pđia,
ei legit, &c. per etiam Auditū
dorsament ejusdem Scripti. Et ei
tr in hec verba, [The Condition, &c.] Li' Lo'
ibus lēis & auditis idem W. S. per
ne inde interloquend hic usq a die
te in quindecim dies, Et het, &c.
em dies dat est pstat W. L. hic, &c.

Rast. 160. Defendant pleads Payment of In B. Regis.
cel pending the Bill. Quer Demurr Quer' Demur'.
jung, Et per Judic — Et quod
illa illa cassere, &c.

Et quia Cur Dñi Regis hic se advi- Cur' advisare
lare vult de & super pñto pđ pñus vult.
m Judic inde reddit sit dies inde
I dat

dat' est partibus p̄dicta' coram Domini
Rege apud Westm̄ (Et.) — Ad que
diem veni tam p̄dicta' J. P. in p̄p̄
son sua qm̄ p̄dicta' R. W. per Attor
suum p̄dicta', Et super hoc l̄co audit
intellect' p̄lito p̄dicta' per ipm̄ R. in ca
sacōn Bill p̄dicta' superius p̄litat' videt
tur Cur Dñi Regis hic quod idem
p̄lito insufficiens est in lege ad p̄dicta'
Bill p̄dicta' J. cassand & vacuand, p̄
quod dēm est per Cur Dñi Regis
p̄fat' R. qđ respond' p̄fat' J. ad Bill
suam p̄dicta', Et. — Sup quo idem
die qđ ip̄ de debito p̄dicta' virtute scrip
p̄dicta' onerari non debet, Quia dñi
quod script' illud non est fēd suum,
de hoc pon se super p̄riam, Et p̄dicta'
J. P. filit, Et. Ideo veni inde J.
(Et.)

Judgment,
2d' Def' re-
spond' Ouster.

Defendant
pleads *Non est
factum*, and
Issue Sur ceo.

Upon a De-
murrer.

Demurrer p̄ Def', Quer' joins —
super hoc l̄co & intell̄co p̄ Justie
p̄lito p̄dicta' E. in cassacōn h̄is p̄dicta'
quer' superius p̄litat' videtur Cur
qđ p̄dicta' quer' sufficiend' materiam
breve suum p̄dicta' manutenend' super
p̄litabit, Per quod dēm est p̄ Cur
p̄fat' E. qđ respond' quer' ad Breve
Parr sua p̄dicta', Sup quo idem E. (Et.)

Judicium sur Demurre ad p̄litum
privileg' Marr Mareleo ad sec' Attor
Cod Banci, 2 Bro. 6. Simile sur
murre, Quod h̄e cassetur, Winch Ent.
Al Vd fac ad Pd Pd qđ h̄e & ret
cassetur, Et Vd fac de novo Ag
1 Bro. 2. Non p̄s per Attornd Gen
Demurre, Bro. Red. 411.

In Replevin.

Rast. 570. Pet' Judic' de querel pze
eo qđ Capellanus Cantuar non est
in Dignitatis & idem J. C. in que-
ill non nominatur p aliquod cogno-
n, Unde pet' Judic' & qđ querel ille
etur & retozđ Aberiozum pđia' sibi
udicetur, &c. Et quia videtur Justic'
quod querel pđia' non est sufficiens in
ad pstat' J. C. coram Justic' hic ad
querel poni respond' eo qđ pđia'
pellanus Cantuar' non est nōen dig-
tis ac idem J. C. in querel ille per
quod cognōen non nominatur Cons'
quod pđia' J. B. nihil capiat p que-
suam sed sit in mia p falso clam
&c. Et pđia' J. C. eat inde sine die,
beat retozđ Aberiozum pđia', &c.

Because the
Original is
insufficient.

et quia audit brevi pđia' & plenius
llo videtur Cur' hic breve pđia'
de causis fore insufficiens & cassa-
in lege Cons' est qđ pđia' quer' ni-
capiat p breve suum pđia' sed sit in
p falso clamore suo, Et quod pđia'
eat inde sine die. &c. Reg. Pl. 280.

Upon the
Omission of
a Word in
the Writ.

et quia Exceptio pđia' Justic' hic per
ecion ejusdem brevis manifesta est
ra, Ideo cons' est quod pđia' quer'
capiat p breve suum pđia' set sit in
p falso clamore, &c.

de Clerk's Assist. 2. 4. Reg. Pl. 291, 292.

B. sum' fuit ad respond' C. R. de
plito qđ reddat ei 100 s. quos ei
& injuste detinet, &c. Et modo ven
pđia' C. qđ pđia' J. in ppđ per-
suis, Et quia pđia' C. in quodam

Upon Vari-
ance in Mis-
nomer.

scripto suo obligatorio vers' p'lat' J. in Cur' p'lat' per quod scriptum p'dia' tenetur eidem C. in p'edia' cent' certo termino in eodem scripto content' vendi n'oiatur & vocatur p' n'om' C. (Ec.) Et in h'rebi p'dia' idem C. n'atur & vocatur per n'om' C. It. tant' s'icq' variac'o existit int' p'dia' h'rebi p'dia' scriptum Obligatorio super script' h'rebe p'dia' impetrat' fuit, cons' est q'd p'edia' C. nihil capiat h'rebe suum p'dia' sed sit in m'ia p' clamore suo, Et p'dia' J. eat inde die, (Ec.) Et h'z' D'ni Regis de donac'one patentes de Atlagaria in J. occ'one p'mis' p'mulgat' p'efat' allocentur, (Ec.) Vide Rast. Ent. 459.

Upon Vari-
ance between
the Writ and
Letters of
Administra-
tion.

ff. **E**t quia p'dia' quer' exceptionem (que p' inspectione & colle- h'is & U'ran p'dia' Cur' hic satis li- non dedic', Ideo cons' est q'd p'dia' nichil capiat per h'rebe suum p'dia' sit in m'ia p' falso clamore suo, Et p' Def' eat inde sine die, Ec.

Upon Vari-
ance between
the Writ and
Testament.

ff. **E**t super hoc visis p' Cur' t'm q'm testamento p'dia' Er' p'edia' comperta est vera, Ideo est quod p'edia' quer' nichil capiat h'rebe suum p'edia' set sit in m'ia p' clamore suo, Et p'edia' Defend' eat sine die, (Ec.) Clerk's Assist. 14. Reg' citat. 280.

Note, That in Quare Impedit by an
 tutor a Disturbance in the Life of the
 aror, the Conclusion of the Count was,
 yunt retardatō Execution Test,
 for that Cause upon a Plea in Abatement,
 Demur super inde the Writ was abated.

Lut. 3.

deo cons' est qđ pđia' Petens nichil
 at p hzebe suum pđia' set sit in mia
 llo clamore suo, Et pđia' tenens
 inde sine die, (Ec.)

Because the
 Writ was not
 according to
 the Register.

utlawry sur Cap ad satisfac' pleaded
 abatement.

epi, Pul tiel Record.

rejoind, h'ur tale Recordum, Ec.
 Day given to bring it into Court.

o quem diem hic veni pđia' A. p
 om suum pđia', Et pđia' C.
 solemniter exat ad inferendū Ac-
 non veni set inde defect sup quo
 est p'fat' A. per Cur Regis hic
 p'fat' C. ad hzebe & Pare sua pze-
 ulterius non respondetur, Ec.

Sur def' de
 Record.

Def' sum in debito unde utlagat' est
 r Variance int' script' & hze Judic
 quer nil capiat per hze & hze paten
 pardonacon utl ei allocat. Cl. Ass. 2.
 d plicm Excommen' in debito, Repe
 literas Absolutionis & per quod
 respondi Judic quod Attoz Def'
 ond p magistro suo, Et non infozm
 Attoz. Pl. Gen. 11.

Upon Jointenancy pleaded by the Defendant, & relicta verificatione.

Ad quem diem veni tam p̄dicta' q̄m p̄dicta' T. B. p̄ Attoꝝm suū p̄dicta', Et super hoc eadem A. relicta verificatione sua p̄dicta' p̄ ip̄am super p̄tens die quod ip̄a non potest deducere quin p̄dicta' T. B. die impetret p̄dicta' h̄is Originali ip̄ius A. tenuit tē p̄dicta' cum p̄t̄m conjunctim p̄dicta' T. B. &c. ut de libero tēto put p̄dicta' T. B. superius allegabit, Et p̄t̄m cōc̄ de meliori h̄ebi inde p̄quirendi, ei conceditur (&c.) Ideo cons̄ est q̄ p̄dicta' A. nihil capiat p̄ h̄ebe suū p̄dicta' sed sit in miā p̄ falso clamore Et p̄dicta' T. B. eat inde sine die, &c.

Quer' per' licent' querend' melius breve.

ff. Et p̄dicta' quer' non deducendo exceptionem p̄dicta' ex causa illi & al' h̄ebi p̄dicta' content' per' licent' querend' melius breve, Et h̄et, (&c.) Ideo cons̄ est q̄ p̄dicta' quer' nichil capiat per' suū p̄dicta' set sit in miā p̄ falso clamore suo, &c. Cl. Aff. 12. Reg. Pl. 28.

Def' die' Bre' s̄t cassabile.

ff. Ad quem diem coram Dño A. apud Westm̄ veni partes p̄dicta' B. Et super hoc p̄dicta' B. q̄ h̄et p̄dicta' T. de Err̄ in lege cassabile existit, & die (&c.) Unde per' Judicē, Et q̄ h̄et p̄dicta' cassetur, (&c.)

Debt upon a Judgment; Plea in Abatement that the Record was removed into the Exchequer-Chamber by Writ of Error. Demanded thereupon, and Judgment, Quod respōdetur. 1 Lut. 601, &c.

Et p[re]dia C. &c. dic[ite] quod ipse non potest dedicere Exceptionem p[re]dictam & bene fatetur h[ic] suum p[re]dictum causa p[re]dicta esse cassabile, Et iidem C. & D. C. pet[unt] licenc[iam] p[er]quirend[um] me[re] h[ic] de Error[um], Et eis conceditur, &c. Ideo cons[ideratur] est q[uo]d p[re]dicta h[ic] de Error[um] in forma p[re]dicta p[er]quisit[ur] cassatur, Et p[er] nullo heatur, Et q[uo]d ip[s]e C. & D. admittantur ad suscitand[um] & p[er]sequend[um] aliud novum h[ic] de Error[um] super Record[is] & Process[ibus] p[re]dicta si voluerint, Et q[uo]d p[re]dicta B. interim de p[re]dictis eat sine die.

The Plaintiff in Error acknowledges the Exception, and prays Licence to purchase a Writ.

Qua quidem h[ic] de Error[um] sic in forma p[re]dicta cassat[ur] p[re]dicta C. & D. p[er] dies computat[ur] suscitaver[unt] aliud h[ic] de Error[um] super Record[is] & p[ro]cess[ibus] p[re]dicta quod tulit hic in Curia coram Justic[is] hic dicta quod sequitur in hec verba, (&c.)

New Writ per Journeys Accounts.

How to plead a Writ brought by Journeys Accounts. Vide Rast. Ent. 417.

Et modo hic ad Octab[rum] Sec[undum] Trin[ster] isto eod[em] Terminio veni[unt] tam p[re]dicta J. G. & R. p[er] Attorn[um] suum p[re]dicta quam p[re]dicta C. f. & R. III. [omitting him that is dead] p[er] C. D. Attorn[um] suum, Et super hoc p[re]dicta J. G. & R. dic[ite] quod post illud continuat[ur] h[ic] p[re]dicta scilicet post Quinden[um] Sec[undum] Hill ult[imum] p[re]terit, Et ante ead[em] Octab[rum] Sec[undum] Trin[ster] p[re]dicta J. G. & R. und[um] Tenen[ti] in h[ic]evi notat diem suum clausit extremu[m], Et pet[unt] licenc[iam] querendi

Plaintiff alleges the Death of one of the Tenants, and prays a better Writ.

querendi melius brebe, Et fiant, Et
 Co quod predicta' Altorum predicta' Tene-
 jam superstit p Cur inde quesit mortu
 predicta' non dedic sed illam bene cogi
 Ideo predicta' C. & f. eant inde
 die, &c. Vide Pl. Gen. 3. 4.

After an Effoin for one of the Defendants
 the Plaintiff says, That one of the Defendants
 is dead, and prays to purchase a better Wic

ff. **E**t modo hic ad hunc diem veni p
 dicta' C. p C. Altorum suum, &
 die qd predicta' B. mortuus est, Et p
 licenc de meliori brebi inde vers predicta'
 A. pquirend, &c. Et ei conceditur, (&c.)

At the Day of Effoin to Warranty, the De-
 mandant and Vouchee appear, and the De-
 mandant alledges the Death of one of the
 Tenants.

ff. **A**d quem diem hic veni tnd predicta'
 P. qm predicta' A. p Altorum suos
 predicta', Et super hoc idem P. die q
 predicta' J. M. un tenend in hzd Or
 ipius P. noiat mortuus est, Et obit
 post ult' continuacōn pliti pdicta' videt
 post Octab Sc Hill ult' pterit de quibus
 loquela predicta' continuat' fuit hic int
 ipm P. & pdicta' A. tenend p Warr suam
 usq ad hunc diem scit in Octab Sc
 Trin tunc pr' sequend & ante eadē
 Octa Sc Trin videt apud C. in Com
 po', Et per' Licenc de meliori brebi
 inde pquirend, Et quia predicta' A. hoc

on dedic ei conceditur, &c. Ideo cons
quod p̄dicta' P. nihil capiat p̄ breve
um p̄dicta', Et p̄dicta' A. eat inde
die, (&c.) Vide Rast. Ent. 107. b.

There may be many other Things pleaded
Abatement; but they will generally come
under one or other of these Divisions in
Abatement, which we must leave to the In-
stry of Clerkship.

Note, By 1 Ventris. 136. agreed, That if a
man concludes a Plea in Abatement, as in
, if it be against him that pleads it, Judg-
ment peremptory is to be given: So if a Man
brings a Plea in Abatement, *Acton non*, &c.
(&c.) *idem* 183. Defendant says, If any such Con-
tract, it was made with the Plaintiff and a
stranger. Plaintiff demurs, because he says,
&c. and no Averment of Stranger's Life;
besides, Defendant had taken Impar lance.
lic' pro Quer'.

idem 235. Plaintiff brings Trover. Defen-
dant after Impar lance says, the Plaintiff and
others brought a Trover before, still de-
murs. *Repl'*, That the two died before
the Action brought, *per quod* that Writ aba-
tens. Defendant demurs, *Respondeat Ouster.*
Hale said, Tho' Defendant cannot plead
nosiner, Ancient Demesne, and the
after Impar lance, because he admits he
will not to answer the Writ; yet such a Plea in
Abatement as this he may: But that comes
in Question, because the Plaintiff replied
and did not demur.
idem 2 Ventris, pag. 196.

*Uncore prist & adhuc paratus.**f. R. versus J. S.*

That he tendered the Money at the Day, and none there to receive it, and that he is yet ready, and tenders it in Court.

ACCION non, Quia die quod idem J. S. in Condicione p̄dicta prius nominat apud G. p̄dicta in p̄dicto Com. I. ad p̄dicta domum manonalem f. R. p̄dicta decimo die Aug. p̄dicta quoniam dat scriptum p̄dicta inter horas huiusmodi primam & quartam post meridiem eiusdem diei parat fuit & obtulit solvendi p̄dicta f. R. p̄dicta 20 l. quas ad eandem domum in eodem die & inter easdem horas solvisse debuit secundum formam & effectum Conditionis p̄dictae. Quod nec p̄dicta f. R. nec aliquis p̄dicta vel eius nomine ad domum p̄dicta in eodem die inter horas super limitat parat fuit ad p̄dicta 20 l. de p̄dicta J. S. recipi. Et idem J. S. ulterius die quod semper post oblationem p̄dicta & post 10 diem Aug. p̄dicta sequens dat scriptum hucusque parat fuit & adhuc parat est ad solvendi p̄dicta f. R. p̄dicta 20 l. illi hic in Cur. p̄fert eidem f. R. parat ad solvendi si (Ec.) Et hoc, (Ec.) (Ec.)

Repl.

(Precludi non) Quia die quod p̄dicta ad p̄dicta domum p̄dicta decimo die p̄dicta sequens dat scriptum p̄dicta inter horas p̄limitat non obtulit ad solvendi p̄dicta f. R. p̄dicta 20 l. secundum formam & effectum Conditionis p̄dicta putat p̄dicta J. S. allegabit Et hoc parat est verificatum

de pet' judicium & datum suum p'dia'
unacum dampnis suis occasione detencon
debi illi sibi adjudicari, &c.

Et p'dia' J. S. ut prius die q'd ipse Rejoinder.
dem J. apud p'dia' domum in predicta
die Aug' p'or' sequen' dat' script' p'dia'
ut horas horologii primam & quartam
post meridiem ejusdem diei obtulit ad
solvend' eidem J. p'dia' 20 l. quas ei ad
eandem domum in eodem die & int' eas-
dem horas solvisse debuit secundum for-
mam & effectum Condiçon p'dia' prout ipse
superius allegavit Et de hoc pon' se su- Issue.
per priam Et p'd J. sicut Ideo (&c.)

Vide Thomps. 159, 181.

(Precludi non) Quia die q'd ipse super Al' Repl.
d' decim' diem Aug' p'or' sequen' dat' In consim. casu.
ript' p'd inter horas horologii primam
& quartam post meridiem ejusdem diei
parat' fuit ad recipiend' de p'fat' J. S.
p'dia' 20 l. q'dq' nec p'd J. nec aliquis
ex parte p'dia' J. adtunc & ibi pa-
rat' fuit ad solvend' eidem J. easdem
20 l. Absq' hoc q'd p'd J. S. ad p'd do- Traverse.
mum (&c.) parat' fuit ad solvend' eidem
J. p'd 20 l. secundum formam & effectum
Condiçon p'd put p'd J. superius alle-
gavit Et hoc (&c.) Unde pet' judic' &
datum suum p'd unacum dampn' suis
occasione detencon' debi illi sibi adjudica-
&c.

Et p'dia' J. ut prius die q'd ipse ad Rejoinder.
d' domum (&c. ut ante) parat' fuit ad
solvend' eidem J. p'd 20 l. secundum for-
mam & effectum Condiçon p'd — Et de Issue.
hoc

hoc ponit se super priam Et pñ f. titur
Ideo Precept' est Die (Ec.)

Vide 2 Mod. Intr. 234. Bro. Vad. 504.
Vide 1 Bro. 173. Quod ad diem & locum
in Condicion' Def. parat' fuit solvendi
Quer Denar' Et quod quer seu aliquis
p eo non veni ibm ad recipiend' Rept' qñ
nec Def. nec aliquis p eo parat' fuit ad
solvend', 1 Bro. 173. & Plac. Gen. 331. Vide
Tender, Refusal, & Uncore prist. Clift. 189.

Def. pleads,
That he had
paid the
Plaintiff part,
and tendred
the rest be-
fore the Bill
was exhibi-
ted.

Quando, (Ec.) Et quoad ult' pmiss'
& Ass. in Parr' pñia' superius f'
ri supposit (Non Assumpsit & Issue tender)
Et quoad pñm pmiss'. Ec. (Accord non)
quia die quod bene & verum est quod
ipe idem C. indebitat' fuisset eidem A.
in pñia' 35 l. p feno sed idem C. ulterius
die quod ipe idem C. post pmiss'. & ass.
ille & ante diem exhibicion' Bille pñia' videt'
scilicet (tali die) apud (Ec.) solvit & satis-
fecit pñia' A. 25 l. de pñia' 35 parcell'
quas quidam 25 l. idem A. recepit Et qñ
ipe idem C. post unitionem & assumptionem
ille Et ante exhibicion' Bille pñia' videt'
tali die (Ec.) apud, Ec. obtulit ad sol-
vend' eidem A. 10 l. pñia' 35 l. residu'
qd ipe semper post pñia' (item diem)
(Ec.) hucusq; parat' fuit & adhuc parat'
existit ad solvend' pñia' A. easdem 10 l.
videt' apud S. pñia' & pñia' 10 l. idem
C. hic in Cur' pñert ad solvend' pñia'
A. si idem A. easdem 10 l. de pñia' C.
recipere vellet Et hoc (Ec.) Unde, (Ec.)

Et adhuc pa-
ratus, &c.

Repl.

Et pñia' A. quoad pñm pñ C. quoad
pñ ult' pmiss'. & assump' in Parr' pñia'

superius spec per ipm C. modo & forma
 pdia' superius plitat' pon se sitit super
 patriam Et quoad pd' plitmd pdia' C.
 quoad pdia' pzim (Ec.) idem A. dic qd
 deludi non, (Ec.) quia dic qd ipd idem
 C. non obtulit (Ec.) modo (Ec.) Et hoc
 per qd inquit per pziam Et pd C. sitit
 Ideo tam ad triand exit' istud qm pdia'
 t Erat' inter partes pd' superius sitit
 una' ven' inde jur, (Ec.)

Non obtulit
 and Issue.

Vide Bro. Vad. 504. Tender of the Money
 before the Original. 1 Lut. 224, 227, &c.
 Item 238.

ff. Acton non, quia dic quod ipd sem-
 per fuit & adhuc existit parat' ad deli-
 band' pstat' A. script' pd' ac ille parat' ei-
 dem A. deliband' hic in Cur pferit sup
 duo idem A. script' pd' de pstat' B. hic in
 Cur recepit Ideo cons est qd idem B. de
 script' ille sit quiet' (Ec.)

Parat' ad
 deliberand'
 script.

S. vers' ff. pzo 30 l. to be paid upon
 Delivery, &c.

Et pdia' ff. ven' & defendi vim & in-
 juriam quando, Ec. Et quoad 20 l.
 pdia' 30 l. idem ff. dic quod ipd sem-
 per post delibac bon' & mercimon' pdia'
 ucul' parat' fuit & adhuc parat' exi-
 tit ad solvend' pstat' S. easdem 20 l.
 Et ille hic in Cur pferit parat' eidem S.
 solvend' Et quoad 10 l. resid' de pdia'
 10 l. idem ff. dic quod pdia' S. Acton
 nam pdia' inde usus cum here non de-
 bet Quia dic qd ipd non debet pstat'
 S. easdem 10 l. nec aliqu' denar' inde
 forma qua idem S. supius vers' eum
 nar-

Def. pleads,
 as to 20 l.
 part, Uncore
 prist.

Quoad resid'
 10 l. non debet
 per patriam.

Repl.
Plaintiff ac-
cepts the 20 l.
and for Da-
mages pleads
Request, and
Refusal to
pay.

narrabit Et de hoc pon se super priam
Et pdia' S. inde alit (Ec.) Et super
hoc pdia' S. hic in Cur de pfar' R. pd
20 l. recepit Ideo idem R. sit inde quiet
tus, Ec. Sed pdia' S. pro dampnis
suis occone detencion earundem 20 l. henc
die qd ipe post deliberacon honozum
incimon pdia' E ante diem impetra
pdia' hris Orig ipius S. scit (tali die
E anno apud, Ec.) idem S. requisit
pdia' R. ad solvend eidem S. easdem
20 l. qd idem R. ill eidem S. solvend
adtunc E ibm penitus recusavit Et hoc
parat' est verificare Unde per' iudicium
E dampna sua occone detencion earundem
dem 20 l. sibi adjudicari, Ec.

Defendant
rejoins *semper*
paratus.

Et pzedia' R. ut prius die quod ipse
semper post deliberacon honozum E mer
mon pdia' parat' fuit ad solvend pfa
S. pdia' 20 l. prout ipe superius alle
gavit absq hoc quod pdia' S. requisit
ipsum R. ad solvend eidem S. easdem
20 l. modo E forma prout idem S. supe
rius allegavit Et hoc parat' est verifi
care unde per' Iudicium si pdia' S. al
qua dampna occone detencion earundem
20 l. versus eum here debeat, Ec.

Traverseth
the Request.

Rejoinder.
Quod requisi-
vit, and Issue.

Et pdia' S. ut prius die quod ipse
quisit pdia' R. ad solvend eidem S. p
20 l. modo E forma prout ipe superius
allegavit Et hoc per' quod inquirat
p patriam Et pdia' R. alit Ideo quod
triandi, Ec.

Vide Plac. Gen. 317. Hans. 110.

A. versus B.

Et non quia die quod ipse idem B. sup p'dict' 29 diem Sept' Anno, sexto per spacium dimid' unius hore ante occasum solis ejusdem diei ad Cur' Com' pranditoriam aulam Inten- tis Templi London' parat' fuit & ob- lit ad solvend' p'fat' A. p'dict' 15 l. p' p'dict' quas ei super eundem diem debuisse debuisset scdm formam & effe- m Indentur p'dict' qd' nec p'dict' A. aliquis al ex parte ejusde' A. liti- authorizat' adtunc & ibm vend' vel pa- fuit ad recipiend' de eodem B. p'dict' l. p' ipm B. in forma p'dict' oblat' Et em B. ulterius die quod ipe idem B. super ab eodem 29 die Sept' huc usq' rat' fuit & adhuc parat' existit ad sol- vend' p'fat' A. p'dict' 15 l. & denat' ill' idem hic in Cur' p'fert parat' fore solvend' A. si idem A. ill' de eodem B. reci- re vellet Et hoc, &c. unde, &c.

Tender of
15 l. Rent,
with an Un-
core Prist, in
B. R.

Et super hoc p'dict' A. recepit hic in Cur' de p'fat' B. p'dict' 15 l. p' eund' in Cur' p'olat' Jo idem B. sit inde actus, &c. Sed p'dict' A. p' dampnis & occasione detencion' carundem 15 l. pro- stando qd' p'dict' B. non parat' fuit & tulit ad solvend' eidem A. p'dict' 15 l. Et idem B. superius inde placitando negabit pro plito idem A. die qd' post p'dict' 23 diem Sept' Anno 6 supradicto licet primo die Iad Anno Regni die

Plaintiff ac-
cepts the 15 l.
Rent.

Sed pro damp-
nis protestando
non obtulit.

Pro placito a
Request and
Refusal to
pay.

Dñi

Dñi Regis nunc 7 ipe idem A. apud
(Ec.) requisivit pdia' B. ad solvendū
eidem A. pdia' 15 l. sed pñ B. ille eidem
A. solvere adtunc & ibidem recusabit
Et hoc, (Ec.) unde, Ec.

Rejoin'd.
Non requisivit,
and Issue.

Et pdia' B. dic qđ pdia' A. non
quisivit pdia' B. ad solvendū eidem
pdia' 20 l. modo & forma put pdia'
supius replicando allegabit Et de
pon se super priam Et pdia' A.
Ideo, (Ec.)

Vid. 2 Mod. Intr. 236. & Bro. Red. 200.

In Account,
Quoad part'
non debet &
perfectis legem.

Et pdia' A. veni & Defendū vim
injur qñdo, Ec. & quoad 28 s.
pdia' 50 s. idem A. dic qđ ipse non
bet pñat C. pdia' 20 s. nec aliquem
nar inde in forma qua idem C. su
rius verlus eum narrabit Et hoc,
[pñat legem. Ec.] Ideo cons est qđ
C. quoad pdia' 28 s. Nihil capiat
breve suum pdia' inde Et quoad pdia'
22 s. de pdia' 50 s. idem A. dic quod
a tempore compoti pdia' huc usq; par
fuit & adhuc existit ad solvendū pñat
22 s. ille Et hoc, (Ec.) Et ille hic in
profert eidem C. parat ad solvendū
super hoc idem C. hic in Cur de pñat
eosdem 22 s. recepit Ideo idem A.
inde quietus, Ec. sed pdia' C. p dam
nis suis occōne detentōn 22 s. ille
dic quod ipse prima die Jan Anno,
& sepius post idem festum apud A.
quisivit pdia' A. ad solvendū eidem
eosdem 22 s. Et idem A. illos eidem
oio solvere recusabit Et hoc, (Ec.)

Quoad resid'
Uncore Prist.

Plaintiff re-
ceives the
Money, Sed
pro dampnis,
Request and
Refusal.

et judic' & da sua occone detentōd 22 s.
 e sibi ad adjudica., &c.

Et p'dia' A. dic' qd ipse tempore requi-
 sition' p'dia' 22 s. fac' eosdem 22 s. apud
 p'dia' obtulit C. parat' ad solvend'
 idem C. 22 s. ille adtunc ibm o'o re-
 p'ere recusabit Et hoc, (&c.) unde pet'
 judic' si p'dia' C. aliqua dampna ea oc-
 ne fere debeat, &c.

Rejoinder.
 Of Tender
 and Refusal.

Et p'dia' C. dic' qd p'dia' A. tempore
 requisition' p'dia' 22 s. fac' non obtulit
 idem C. eosdem 22 s. parat' ad solvend'
 out p'dia' A. superius allegabit Et
 pet' qd inquiratur per p'tiam, &c.
 de Plac. Gen. 363. 1 Bro. 200. Quod
 semper parat' fuit solvere denar' quos
 pet' recepit in Cur'. Plac. Gen. 255.

Surrejoinder.
 Non obtulit.
 And Issue.

By *Ventris 1st Part, pag. 322.* In Debt for
 not incurred at Two half Years.

Non debet to one, to the other, *Alia*ion
 on, because he was ready to pay at the
 y, &c. and has been ever since. Et pro-
 in Cur' Ideo pet' Judic' de dampn',
 intiff demurred, for that he did not say
 od obtulit, for where the Time and
 ce of Payment is certain, *Semper para-*
 is no Plea without an *Obtulit*.

For the Defendant it was said, that the
 intiff ought to reply to a Demand. 1 *Inst.* 43.
 is a good Plea for Heir in Dower, to save his
 images, to say, That he was always ready,
 als Entries 159. *Semper paratus* is
 ded without an *Obtulit*. So 1 *Rolls* 573.
 Mention made of a Tender.

But then another Fault was found, that it was pleaded in Bar, whereas it ought to have been only in Bar of Damages, and not to the Action, and this was agreed to be fatal.

But the Court held the Plea to be naught for the other Cause also.

A. *versus* B. for Detinue of Cattle after an *Emisset*.

Defendant
pleads Tender
of the Cattle,
and Refusal to
accept them.

*Et Uncore
Prist, sed quod
sunt fera na-
tura Et pot'
diem ad deli-
berand', &c.*

A Cōm non quia dic' qđ pđia' A. di-
 & anno supradictis apud D. pđia'
requisivit ipm B. ad pđia' septem vac-
cas & duas Iubencas, Anglice Heifers
eidem A. super quartum diem Aprilis
tunc p' sequend deliberand' quas quidem
sept vaccas & duas Iubencas idem B.
pđ quarto die Aprilis obtulit sed idem
A. Vaccas & Iubencas ill' de eodem
B. recipere adtunc & ibidem penitus
recusabit Et idem B. ulterius dic' qđ
ipe semper a pđia' quarto die Aprilis
hucusque parat fuit & adhuc existit
deliberand' p'fat' A. easdem Septem
Vaccas & duas Iubencas qđq' Vac-
& Iubence pđia' sunt fere nature &
in Cur' convenient' fugari non possunt
Et p'et diem idem B. ad Vaccas
Iubencas p'edict' p'fat' A. deliberand'
Et hoc parat' est verificare unde p'et
dicend' si p'edict' A. aliqua dampna
occone habere debet, &c. Ideo consi-
qđ p'ed' B. habeat deliberaconem de
tem Vaccarū & duarum Iubencarū
p'edict' Et p'edict' B. in M'ia, &c.

See for other Precedents, 3 *Brownl.* 176.
Sh. 220, 244, 246. *Rast. Ent.* 179. *Vet. int.* 202.
Co. Ent. 141. *Thompson* 181. *Dyer* 82.

Uncore Prist.

Uncore Prist, id est, adhuc paratus,
 it's said, ought to be pleaded the same
 Term the Declaration is of, without Impar-
 lance, (*Vide postea.*)

This is a Plea used by a Defendant to save The Defini-
 the Forfeiture of his Bond, being sued for a tion of it.
 Debt due at a Day past, saying that he ten-
 dered the Debt at the Time and Place, and that
 there was none to receive it, and that he is
 now also ready to pay the same. 7 *Ed.* 6. 83. The Effect
 and this it's said will save the Defendant from thereof.
 the Penalty of his Obligation; and if now the
 Plaintiff will not take it, but take Issue upon
 the Tender, and it be found against him, he
 loath his Money, and is Remediless for it for
 ever. *Co. Litt.* 207. *Kelw.* 74. *Dyer* 83. 9 *Co.* 79.
Anger's Case.

And some Books say, it ought not to be
 pleaded after Imparlance, without Consent of
 the Parties, as 33 *H.* 6. 2.

But others seem to be of a contrary Opi- When it may
 on, and that if the Defendant in Debt upon be pleaded
 Obligation imparl until another Term, after Impar-
 and then plead, that he tendered the Money lance.
 the Day and Place, and that no Person was
 there to receive it, and that he is [*adhuc pa-*
atus,] it is a good Plea, and it shall be no
 stoppel by the Imparlance to say, *Ad ipe*
adhuc paratus. *Dyer* 300.

When not.

And yet in Dower, if the Tenant imparl he shall not say after, *Quod illi fuit semper paratus, &c.* 5 Ed. 4. 141.

When it needs not.

Others speaking when it need not be pleaded, &c. say, That if an Obligation be with Condition for the Payment of a lesser Sum, and the Obligor tender, and the other refuse, he need not plead **Uncore Prist**. 21 Ed. 4. 42 & 52.

Needs to be pleaded.

But others contradict this, as 21 H. 6. — And by 21 Ed. 4. in case of a lesser Sum, the Obligor plead **Uncore Prist**; and it is there also said, that if the Obligee take Issue upon the Tender, and it be found against him, he hath lost the Advantage of the Obligation forever. *Vide* 20 Ed. 4. 1.

Bond to stand to Arbitrament.

If one be obliged to stand to the Arbitrament of J. S. in Debt brought upon the same Bond, he shall not say **Uncore Prist**; but it seems to be otherwise in Debt brought for the Arbitrament.

Executors.

It's said, that where Executors plead Tender of a Rent, they ought to plead **Uncore Prist**. 7 Ed. 6. 26. b.

Annuity.

In Annuity, to the Distress **Uncore Prist** is no Plea, but the Defendant shall pay the Arrearages before and after the Writ purchased. 2 H. 4. 3. b.

When a Condition collateral, as perform Award.

Regularly, if the Condition of a Bond be collateral, and out of it, as to perform an Arbitrament, &c. after a Tender and Refusal, the Party shall not say **Uncore Prist**, but it is peremptory, and a perpetual Bar to the Party that refused. But it is otherwise, if the Condition be of the Essence of the Bond, to pay Money. *Vide* 4 Ma. Dyer 150. and there though

When it is of the Essence of the Bond, as to pay Money.

though the Place of Payment be express'd in the Condition, yet he ought to plead **Uncore Prist**. 22 Ed. 4. 25. 7 Ed. 4. 3.

If a Bond of 100 l. be made with Condition for Payment of 50 l. at a certain Day, Tender and Refusal at the Day, without saying **Uncore Prist**, is not a Plea in an Action of Debt; but he ought to say, *Quod est adhuc paratus*, and ought to tender the Money in Court.

Bond to pay a less Sum.

Uncore Prist & profert in Cur'.

But if one be bound in 200 Quarters of Corn, for the Delivery of 100 Quarters, if the Obligor at the Day tenders the 100 Quarters, he shall not plead **Uncore Prist**, because tho' the Corn be Parcel of the Condition, yet it is *bona peritura*, and is a Charge to the Obligor to keep it; and the Reason why, in the Case of the Bond, the Sum mentioned in the Condition is not lost by the Tender and Refusal, is, because it is not only a Duty and Parcel of the Bond, but also because the Obligee had Remedy by the Law for it.

Bond in Corn to deliver Corn.

Bona peritura.

Yet it is otherwise of a single Bond, or of a Statute, or of a Recognizance acknowledged with a Defeazance for Payment of Money; for there Tender and Refusal bars the Party forever to recover it, because that Parcel of the Sum contained in the Bond, Statute or Recognizance, was contain'd in the Defeazance, and in this Case he need not plead **Uncore Prist**.

Single Bond, &c. with Defeazance.

Peremptory Bar.

So of a Bond with a Condition to do a collateral Act, as to deliver Timber, or to stand to an Arbitrement. *Co. Litt. 207. a. 9 Co. 79. a.*

Condition collateral.

If one be bound that a Stranger shall make a Bond to the Obligee, it is sufficient to say that

Bond to be made by a Stranger.

that the Stranger tendred it, and the Obligee refused it, without saying *Uncore Prift*.
10 H. 6. 16.

So if one be bound, that *J. S.* and a Stranger perform all the Covenants contain'd in certain Indentures, between the Obligee and the said *J. S.* and there is a Covenant in the Indenture, that the said *J. S.* shall pay to the Obligee at a certain Day 100 *l.* If *J. S.* tender the Money and he refuse it; in Debt brought upon the Bond, the Obligor may say, that *J. S.* tender'd and he refused, without saying *Uncore Prift*. 27 H. 8. a. 19 H. 8. 12. a.

Feoffment on
Condition to
pay, &c.

If one makes a Feoffment by Deed upon Condition, that the Feoffor shall pay a certain Sum of Money; the Feoffor may by Agreement between them give another collateral Thing in Satisfaction, and if he tender the Money and the other refuse, he is perpetually discharged of the Money, and shall never pay it. 9 Co. 79. a.

Bill to deliver
Corn.

And if one by a Bill Obligatory acknowledge himself to owe Twenty Quarters of Corn, to be delivered such a Day at a certain Place, and if he fails, to forfeit 10 *l.* Tender and Refusal is no Plea, without saying *Uncore Prift*. And it seems by *Phelpdale's Case*. That if one makes a Bond to *B.* and delivers it as his Deed to *C.* to deliver to *B.* if *C.* tender the Deed, and *B.* refuse, it is peremptory. 1 Eliz. Dyer 167. 5 Co. 119.

On Forfeiture. *Uncore Prift*. Bond delivered to *C.* to be delivered to *B.*
Peremptory.

Tender in
Court.

If one tender the Money in Court, and the Party refuse it, he shall never plead *Uncore Prift*, because it is a Refusal upon Record.

Money brought in
Court on
Motion.

And *Stiles* in his *Practical Register* (Tit. *Process and Proceeding in Law*) says, That where

the Defendant did tender unto the Plaintiff the Moneys (for which the Action is afterwards brought against him) before the Action was brought, and the Plaintiff refuseth them, and notwithstanding sues the Defendant; the Court will (upon Motion and Proof of this Tender) order the Money to be brought into Court, and will stay the Plaintiff's Proceedings, for the Court will not encourage them to be vexatious.

Note also that it's said, That the Defendant shall be concluded his Plea of *Touts temps prist*, or *Semper paratus* after Imparlance. *Ed. 4. 141.* which was in Dower. See more *21 H. 3. & 14 H. 6. 3. 7 H. 6. 7 & 17. H. 4. 7. & 7 H. 4. 4. 9.*

A. versus B.

Quoad 7 l. 8 s. 6 d. p̄fecit legem — Et quoad 59 s. 6 d. residū idem B. dic quod ipse non potest dedicere Accōd p̄d. quoad p̄dict' 59 s. 6 d. nec quin ipse debet p̄fat' A. p̄d 59 s. 6 d. Et dic quod se parat' est & semper huc usq; parat' ut ad reddendū p̄fat' A. eosdem 59 s. 6 d. Et ill' hic in Cur' p̄ofert p̄fat' A. de reddendū Et hoc, (&c.) unde pet' iudic' Et qđ p̄dict' A. de dampnis oc- curre debi ill' p̄cludatur, &c.

*Quoad part
nil deb' &
p̄fec' legem.*

*Quoad resid'
uncore prist.*

Et p̄dict' A. dic qđ p̄dict' B. ad res- p̄sponsum p̄dict' quoad p̄dict' 59 s. 6 d. comitti non debet quia dic qđ ipse als' p̄st' Term' Pasch' p̄r' p̄etit p̄ p̄arr' p̄d' et ipsum in forma p̄dict' fac' hic in Cur'

Repl.
That he
ought not so
to plead after
Imparlance,

Cur narrabit ad quam p̄dicta' B. per hanc
 cenciam inde interloquendi hic usque ad
 hunc diem scilicet a die Sec̄e Trin̄ in tres
 Sept̄ ad respond̄ p̄fat' A. de p̄lito p̄dicto
 Et habuit, &c. Unde per iudiciū
 p̄dicta' B. ad dicendū qđ ipe semper hūc
 usq; parat fuit & adhuc existit ad red
 dendū eidem A. p̄dicta' 59 s. 6 d. admitti
 debeat, &c. — Et quia videtur Cur hūc
 qđ p̄dicta' placitum quoad p̄dicta' 59 s. 6 d.
 p̄ p̄fat' B. superius placitat non esse
 sufficiendū in lege Ideo cons̄ est qđ p̄dicta'
 A. recuperet versus p̄fat' B. p̄dicta' de hūc
 & dampna sua occasione detentōis debi
 nec non p̄ mis & cust' suis circa sectam
 suam in hac parte appoit ad requisitōis
 ipsius A. ad 16 s. 8 d. per Cur taxat &
 p̄dicta' B. in mīa, &c. Vide 1 Bro. 200.

Judi' pro
 quer'.

Plaintiff re-
 plies, That the
 Defendant
 ought not to
 be admitted
 to plead *S m-*
per paratus,
 for that he
 was former-
 ly return'd in
Issues vers.
Quer'.

Et p̄dicta' A. dic qđ ipe p̄cludi non qu
 die quod ipe als scilicet octavo die
 Maii Anno Regni die Dñi Regis nūc
 21 p̄secut fuit extra Cur ipsius Dñi Re-
 gis de Banco hic apud Westm̄ quoddam
 breve ipsius Dñi Regis de Distring hūc
 p̄d̄ Def. in p̄lito deb̄ sup quo p̄d̄ A. modo
 superius p̄litandū) supponendo p̄ idem
 breve quod p̄dicta' Def. redderet ei 60 s.
 quos ei debet & injuste detinet in quo
 quidem brevi de Distring, &c. idem
 Def. returnat fuit p̄ breve p̄dicta' in ex
 prout p̄ Recor̄d inde in Cur hic residendū
 plenius liquet Et hoc parat est veris
 care unde per Iudic si p̄dicta' Def. con
 tra Recor̄d p̄dicta' admitti debet qđ ipe
 est & semper parat fuit ad solvendū p̄lat

Cur

Quer p'dict' 60 s. in forma p'dict', &c. Un-
 per judiciū & dampna sua occōne de-
 monō debi illi sibi adjudicari, &c. Def.
 nemur. Trin. 20 H. 7. Rot. 546. p Un-
 ge Prist Et Estoppel qd Def. comput
 Distringas. 1 Bro. 201.

There are also some Things that in many
 Cases may be pleaded after the last Continu-
 ance, as Excommunication, Misnomer,
 Error of the Party, Release, &c. but of this
 more in its proper Place; we are now exa-
 mining Matters that may be pleaded before
 imparlance, &c.

See the End of this Book, Tit. Bar puis
 arrein Continuance.

As to Tender,

It appears before, that sometimes it may be
 pleaded without an *adhuc paratus*, and
 sometimes also after an Imparlance.

It is also pleaded in several Actions, as in
 trespass, Tender of Amends is often pleaded
 Bar, of which more after in Tit. General

As for Precedents of Tender Denar and
 Mufal, see before, and see Bro. Vad. 89, 107,
 9. Bro. Red. 93, 107. Lev. Ent. 30. 1 Bro.

Pleading of Tender of the Residue of Mo-
 due, and not levied by Tenant *per Ele-*
 and thereupon a *Scire Facias* brought.
 laund. 69.

Tender in Cur, *Thomps.* 60, 66, 159, 265.
Gen. 255. 2 *Mo. Intr.* 143. *Bro. Red.* 90,
 10. *Cl. Assist.* 104. *Bro. Vad.* 103.

Tender

Tender of a Release and Refusal. *Lew. Ex.*
44. *Vid. Thes. Brev. 162.*

Tender de Cartis in Cur, 1 *Bro. 264.*

Pleading of Tender of an Award to the Defendant, and that none came on his Part to receive it. 2 *Saund. 185.*

Tender of Money before the Original brought. 1 *Lut. 224, 227, &c. 238.*

Tender of Rent reserved upon a Lease for Years upon the Land leased, &c. 3 *Lew. 143.*
1 *Lut. 367, 593.*

And *Note*, That in case the Defendant alledge Impar lance, as to the 2, 3, & 4. Promise, plead **Non Assumpsit**, and Issue thereon, and as to the first Promise, he pleads **Toutis tempus prist**, and Tender of the Money before the Action brought, & *pfert in Cur*, Demurre thereupon, for that he says, *pfert easdem viginti & quinque*, omitting the Word *Libra*, and also for that the Plea was pleaded alledge Impar lance. And Judgment was given for the Plaintiff, because it appear'd that the Tender was after Two Requests to pay the Money, one by the Wife *dum sola*, the other by them both after Marriage. *Vid. 1 Lut. 224, 227.*

Vide 1 Lut. 238. upon an **Indebitatus assumpsit** for several Sums upon several Promises after Impar lance. Defendant pleads that the several Sums amounted to 66*l.* And as to Part, **Non assumpsit**; and as to the Residue, that the several Promises were for one and the same Bargain of a Horse; and that as to the Residue, he tendred it before the Original, and that the Plaintiff refused, and that he is *adhuc paratus & pfert in Cur*. The Plaintiff

Plaintiff demurred generally; and the Plea was adjudged ill by reason of the Imparlance, and also for Incertainty, for which of the Pro- cess the Money was tendred. *Vide Ray- hill. 11 W. 3. R.*

Further Advantage by Demurrer.

BESIDES the Advantage before mentioned given to the Defendant to plead in Abatement, &c. he may also take another Advantage before he plead directly in Bar of the Action, tho' after an Imparlance, and that is to demur or abide in Law; for when the adverse Party is advised, that the Count or Declaration is insufficient in Law, then he may demur in Law, and refer it to the Judgment of the Court; for Matters in Law are to be decided by the Judges, and Matters in Fact by the Juries.

And note, That a Demurrer may be either to the Count or to the Plea, or upon Parts of Pleading; and also it may be either General or Special.

But we will only in this Place look into that relating to Writs and Declarations, or Pleas, which is in the Nature thereof, the other Pleas, &c. being more proper to follow in the Fourth Part of this Treatise; which may be divided as follows:

De

Demurrer al
Parr, &c. in

1. Annuity.
2. Appeal.
3. Affize.
4. Audita Querela.
5. Case.
6. Covenant.
7. Debt.
8. Formedon.
9. Vutes & Clam.
10. Information.
11. Monstrance de D.
12. Prohibition.
13. Quare Impedit.
14. Scire Facias.
15. Trespas.
16. Warrantia Char.
17. Waste.

1. Demurrer al Count in Annuity. 2.
Ent. 147.

Et p̄dict' R. p̄ S. Attorn suum
Et def. vim & injur' quando
Et dic' qd p̄dicta materia in Parr p̄dicta
tenē non est sufficiens in lege ad actionem
p̄dicta' manutenendū Unde per judicē
idem N. ab Actione sua p̄dicta' hendit
datur Et p̄dict' N. ex quo ipse suam
materiam in lege ad actionem suam
manutenendū superius declarabit, Et
dict' R. eam non dedic' nec ad eam
qualiter respond' petit judicium &
nuum reddidit p̄dicta' & arreraq' ejus
Continuance. unacum damp', &c. sibi adjudicari
quia Justic', &c.] Vide postea.

Alit scdm Winch. Entr. fol. 9.

Et p̄d L. p̄ J. L. Attornd suum veni & defendi vim & injur' quando, &c. Et qđ Narr p̄dix' minus sufficiens in e existit ad p̄d T. C. & A. acconm p̄d versus ipm L. hendi manutene- di Qđq̄ ipe ad Narr ill' modo & for- p̄d declarat necesse non het nec p̄ le- m terre tenetur respondere Et hoc rat est verificare Unde p̄ defcnd sum- d Narracōnis in hac parte idem L. judic' & qđ p̄d T. C. & A. ab accone p̄d vers' ipm L. hendi p̄cludantur,

Et p̄d T. C. & A. ex quo ipi sufficiend- teriam in lege ad ipos T. & A. accon- m p̄d vers' p̄fat L. hendi manutenendi- us declaraver' quam ipi parat sunt- ficare quam quidem materiam p̄d- non dedic' nec ad eam aliququaliter re- nd' set verificacōn ill' admittere oīo re- at pet' judic' & annuū reddit' p̄dix' cum arreraq̄ ejusdem & dampnis & octōne substractōnis Annui reddit' eis adjudicari, &c. Vide Winch. Entr. 8.

The Count was in Annuity for the Affig- of a Tenant for another's Life, against the- cesssor of a Bishop for Arrears of Rent and- fits belonging to the Constable of *Wisbech*.- ble, granted by the late Bishop to one for- Life of Three other Lives who assigned it- the Two Plaintiffs.

Hut.

Hutton demurr'd to the Count: 1. *Excution*, That the Creation of a new Bishop not appear, and so non constat in what Time the Annuity was arrear. That the Successor of a Bishop shall not be charged with Arrears of the others Time; but contra of a Parson for that is out of the Parsonage. 22 *Eliz.* 1. Executor of a Bishop shall be charged, but not the Parson.

2. Demurrer al Appeal de Murder. *Vol. 1. Entr. fol. 57.*

Et p'dict' E. M. in prop' persona sua veni & defendi vim & injuriam quam fecit & omnem feloniam & murdrum & quicquid, &c. Et per auditum h'ris de p'pell p'dict' & Rectorum ejusdem h'ris legitur in hec verba.

ff. *Jacobus Dei Gra* (&c. recitatur h'rief & Rectorum) Quibus lecta & auditum idem E. per judicium de h'zevi p'dict' quod dicitur quod h'zeve p'dicta minus sufficiens lege existit ad ipm E. ad h'zeve illud spondi compellendū Et hoc parat est iustificare Unde per judicium de h'zevi p'dict' & ei inde allocat & quod h'zeve illud cassatur, &c. Et quoad feloniam & murdrum p'dict' idem E. dicit quod ipse in nullo est de culpabilis Et inde de bono & malum ponit se super Priam & p'dict' R. Rectorum, &c.

Et p'dict' R. E. dicit quod p' aliqua p'p'at h'zeve p'dicta cassari minime debet quia dicit quod h'zeve p'dicta bonum & iustum est

ms in lege existit ad p̄dia' E. M. ad
 dia' breve respondere compellens quod
 idem h̄e idem R. parat est verificare
 out Cur, &c. Unde per Judicē & quod
 suum p̄dia' satis bonū adjudicetur,
 [Sed quia Cur, &c.]

Note, In the Queen's-Bench the Continuance
 the Joinder is after this Manner :

Continuance of a Joinder in Demurrer.

Et quia Cur [or, sed quia Cur] die Continuance:
 Dñe Rñd hic de judicio suo de &
 p̄missis reddendū nondum advisatur,
 inde dat est partibus p̄dia' coram
 Rñā apud Westm usq; diem —
 post — de judicio suo de & super
 p̄missis audiendū Eo qđ Cur die Dñe Rñd
 inde nondum, &c.

And the Form 'of the Common-Pleas runs
 : Et quia Justic' hic se advisare vo-
 at de & sup p̄missis p̄iusq̄m judic' in-
 reddant dies dat est partibus p̄dia'
 in Octab Sed Hillarii de audiendū
 de judicio suo eo qđ iidem Justic' hic
 e nondum, &c.

See some Precedents of Demurrers, with the
 continuances and Judgments thereon, in the
 Part of *Instruct. Cleric.* from fol. 225,
 237.

3. Demurrer al' Mase del Rent
 M. M. L. B. R. W. J. D. J.
 Vid. Rast. Ent. fol. 79, &c.

Et p'dia' J. B. dic' quod ipe ac p'dia' M. L. R. & J. D. sunt Tenentes de libo ten'to de p'dia' 30 Ac'r terre cu' pertind' Absq' hoc q'd h'et' seu die imp'tracon' h'is p'dia' habebatur aliqu' percepto' reddit' p'ed' in die querela c'ificat' no'iat in h'ebi p'd Et quoad al' quem reddit' exeund' de eo q'd sibi p'tin' de eisdem 30 Ac'r die q'd M'isa inde i' ipm & p'fat' Abbat' fieri non debet qu' die quod materia hujus M'ise spec' n' est sufficiens in lege ad ponend' i' J. B. respond' p'fat' Abbati super ead' Unde no' intend' q'd p'd Abbas per ead' dem Querelam M'isam suam p'd m'nutenere potest Unde pet' judic' Et idem Abbas ab M'isa sua p'd vers' m' habend' p'cludatur.

Et p'd Abbas ex quo ipe suffici' Querelam vers' p'd J. B. & p'd M. L. R. & J. D. superius fecit ad qua' idem J. B. sufficien' in lege non spond' pet' judicium & q'd procedatur de vers' eum ad cap'conem M'ise, &c. quoad p'd p'litum p'd M. L. R. & J. idem Abbas dic' q'd, &c. (And so he p'scribes for a Title to the Rent, &c.) Et p'd M'isam, &c.

ad Amis sur le Title, and Demurrer up-
on the Title.

Et p^r I. per q^d sup titlo p^r capiatur
Amis Et p^r Abbas sitit Ideo su-
titlo ille int' eos capiatur amis Et
R. III. die q^d ipe necesse non het nec
Legem terre tenetur p^rat' Abbati su-
titlo p^r respondere Unde per' judi-
m Et q^d p^r Abbas ab amis sua p^r
s eum hend' pcludatur, &c.

Demurrer al Audita Querela. Vide
Rob. Ent. 155.

Et super hoc p^r J. H. defend' vim &
injur quando, &c. Et die q^d hze &
re p^r minus sufficiend in lege exi-
nt ad ipm J. H. ab execucone Judi-
p^r vers' p^rat' C. H. hend' psequend
pellend sive retardand Quid ipe ad
be & Parr ill modo & forma p^r fact'
declarat' necesse non het nec per Le-
m Terre tenetur respondere Et hoc
rat' est verificare unde p defend' suffi-
d hzis & narraconis in hac parte
m J. per' judic & execucon debi &
mpnoz p^rdia' virtute Iudicii p^rdia'
& adjudicari, &c.

Et p^rdia' C. H. ex quo ipe sufficiend
materiam in Lege ad p^rat' J. H. ab
exucone iudicii p^r vers' ipm C. H.
nd & psequend repellend in q^d & narr
s p^rdia' supius allegabit, quam qui-
m materiam p^rdia' J. H. non dedie
L nec

net ad eam aliquantū respond, set veritate
 rationē illē admittere omnino recusat per
 iudicē & qđ ipse virtute scripti relaxaco
 p̄dicta a quacūq; executōe rationē Ju
 dicii p̄dicta versū eum p̄stat J. H. ut
 p̄fertur reddit exoneretur, &c. Et quia
 Justiciē hic se advisare volunt, &c.

It appears this *Audita Querela* was
 brought where three were bound to one, and
 the Obligee released to one, and afterwards
 impleaded another, who suffer'd Judgment by
Non sum informatus, afterwards the Re
 lease came to his Hands against whom the
 Judgment was had, and he brought the *Au
 dita Querela*: It is also further observ'd
 that this Matter was not adjudged, but the
 Parties agreed; for the Plaintiff in the *Au
 dita Querela* doubted his Cause, because the
 Release was made before the Judgment was
 against him, and the Defendant likewise
 doubted, because the Release was made to an
 other and not to the Plaintiff, and for that the
 Plaintiff was ignorant thereof, the Justices
 did seem rather to approve of the *Audita
 Querela*, because the Plaintiff was not know
 ing of the Release.

See Demurrer to an *Audita Querela* upon
 on a temporary Release after Judgment, *Br.
 Red. 124, &c. Simile, Bro. Met. Nov. 65.*

See the like to an *Audita Querela* upon
 cognō Accōnem p̄ duric Imprisonament
 Vidian. Entr. 110.

See the like with special Causes upon
Audita Querela, and a Recognizance
 thereupon. Upon Suggestion of a Release
 where the Defendant was Surety for the Plaintiff

ff upon a Bond for Performance of Cove-
nants, the Causes were, *Co qd pda' E. H.*
non pferit hic in Cur Script Relaxat
in Parr pda' supius spec quod ipe per
Regem Terre pferre debuit. Idem Bro.
Met. 70.

The like to an Audita Querela in Banco
brought by the Defendant in Cur de Cod
Banc, and his Bail. 2 *Brown. Ent.* 50.

The like to an Audita Querela by the
Sureties upon a voluntary Escape of the Principi-
al. *Co. Ent.* 86. And 5 *Co.* 86. *Blomfield's Case*,
is said that the said Writ of Audita Querela
lies not for the Surety, for tho' the Plaintiff in
the Action may have an Action upon the
Escape against the Sheriff, yet until it be satis-
fied the Surety may not have Audita Que-
rela, because the Execution of the Body is no
satisfaction for the Debt.

The like to an Audita Querela upon a
Judgment in Case in *Banco Regis* brought by
the Heir and Tertenants, where the Defen-
dant in the Judgment had paid the Moneys
covered in his Life.

The Plaintiff joins in Demurrer, and prays
Superseas of the Execution, Judgment gi-
ven for the Plaintiff and Superseas awarded.
es. Brev. 30, 31.

5. Demurrer at Parr in Case.

Et modo ad hunc diem, &c. coram In Banco Regis
Dño Rege apud Westm veni tam
J. C. & R. H. p Attoꝝ suum pda'
& pda' J. T. p H. T. Attoꝝ suum
idem J. T. defend vim & injur
L 2 quando.

quando, &c. Et per iudic de Parr
quia dic qd Parr pda' materiae
eadem content minus sufficiend in Leg
existit ad actionem ipor J. C. & R.
pda' vers ipm J. L. hend manutene
ad quem idem J. L. necesse non het
p Legem terre tenetur aliquo modo
spondere Et hoc parat est verificare
de pro defeu sufficiend Parr in hac par
idem J. L. per iudic de Parr ille
qd Parr ille cassetur, &c.

Et pda' J. C. & R. H. dic qd p al
qua preallegat Parr ipor J. C. &
R. H. cassari minime debet quia dic
Parr pda' necnon materia in eadem
content bon & suffic in Lege existit
pda' accor ipor J. C. & R. vers ipm
J. L. manutene quam quidem Parr
materiamq in eadem content iidem
J. C. & J. H. parat sunt verificare
pbare put Cur, &c. Et quia idem
J. L. ad Parr ille non respondi nec
hucusq aliquo aliter dedic iidem J.
R. H. per iudic & dampna sua ordi
pmissor sibi adjudicari, &c. Et quia
Cur, &c. Vide 2 Saund. 114.

The chief Cause of this Demurrer was,
that both the Plaintiffs had join'd in
Action, tho' they had several Interests,
prescribed for the Defendant to grind
Corn & Moulture ad Molendina pda'
eorum unum: The Joinder in the Action
allow'd, and also the Prescription as laid;
it was then said by the Justices, 1. That
ought to have been better alledged,
That the Tenants of the Manor ought

ind ad Molendinum p̄dict' seu eorum
num, viz. all the Moulture which was not
ground at the Plaintiff C. his Mill, to be
ground at the Mills of the Plaintiff H. and all
grist which was not ground at the Plaintiff
his Mills, to be ground at the Mills of the
Plaintiff C. 2dly, That the Prescription was
so general, that the Defendant ought to
grind all Corn and Grain spent in his House,
or then he could not feed any Pullen or Cat-
tles, &c. if so be it was not ground, which
was unreasonable; and for those Two Excep-
tions, the Plaintiff's Counsel pray'd Judgment
for the Defendant, because they intended to
bring a new Action, and amend those
faults.

Demurrer at Barr in Case in Cod Banco.

Et p̄dict' A. B. p̄ C. D. Attor̄m
suum ven̄ & defendi vim & injur
quando, &c. Et dic̄ qđ Barr p̄dict' ma-
teriarū in eadem content̄ minus sufficien̄
in Lege existunt ad p̄dict' C. f. accō-
nem suam p̄dict' vers̄ ip̄m A. B. hēn̄
manutenend̄ ad quam quidem Barr
modo & forma p̄dict' fac̄ & declarat
idem A. necesse non hēt nec per Legem
terre tenetur respondere Et hoc parat̄
si verificare Unde p̄ defendi sufficien̄
Barr, idem A. pet̄ judic̄ Et qđ p̄dict'
C. f. ab accōn̄ sua p̄dict' vers̄ ip̄m C.
hēn̄ p̄cludatur, &c.

Et p̄dict' C. f. ex quo ip̄e sufficien̄
materiam in Lege ad accōnem suam p̄
vers̄ p̄fat̄ A. B. hēn̄ manutenend̄ su-
pius

pius declarabit quam ipse parat est verificare, quam quidem materiam predictam A. non debet nec ad eam aliquammodo respondere set verificationem illam admittere omnino recusabit, idem C. per iudicem & dampna sua occasione Promissorum sibi adjudicari, &c. Et quia Iusticie, &c.

Vide Co. Ent. 23. Winch. Ent. 28, 31, 73, 76. 3 Le. 130.

See 2 Ven. 66, 70. Demurr. al Narr. in Case.

Upon an Action on the Case against a Sheriff for an Escape and false Return of a Captive corpus & paratum habeo, to which the Sheriff demurred. Resolved by the Court that Judgment should be given for the Plaintiff, because the Defendant had not pleaded the Statute 23 H. 6. cap. 10. for letting Prisoners at large upon reasonable Security, and shewn the Matter of Fact; for the Court agreed it to be a private Statute, of which they would take no Notice if it was not pleaded. 2 Saund. 152, 153.

Demurrer al Narr in Covenant.

Et predictus C. & A. per J. W. Attor-
num suum veniunt & defendunt vim & injuriam
quando, &c. Et dicunt quod Narr predictus modo
dicta & forma predicta facta ac materia in easdem
contentis minus sufficientem in Legge
existit ad predictam W. Accedunt suam per verba
eos habere manutenendum Quodque ipsi ad
Narr ille modo & forma predicta facta necesse
non sunt nec per Legem terre tenentur re-
spondere Et hoc parat sunt verificare Unde
per defectum sufficientem Narr ipsius W. in hac

parte idem C. & R. per iudic & quod
 dia' W. ab Accione sua pdia' vers' cos
 hend' pcludatur, &c.

Et p'd W. ex quo ipe sufficiend mate-
 riam in Lege ad ipm W. Accionem suam
 p'd vers' p'fat C. & R. hend' manutenend'
 quam ipe parat est vericare quam qui-
 dem materiam p'd C. & R. non dedie-
 nec ad eam aliquale' respondi set verifi-
 cacon' ille admittere s'io recusat idem W.
 per iudic & dampna sua occone p'miss'
 sibi adjudicari, &c. Vid. Winch. Ent. 115.
 simile Winch. Ent. 119. and concludes, per
 iudic & dampna sua occone fraccon' Con-
 dencon' p'd sibi adjudicari, &c. the like
 idem 120, 132, 159. Vide 2 Ven. 55. Co. Ent.
 14. Rast. 137.

Alit scdm 2 Sand. 366. post Oper del
 Andent Quibus Ic'is & auditis pdia'
 C. f. per Iudic de Parr p'd quia die
 p'd Parr p'd materiaq; in eadem content'
 minus sufficiend in lege exist' ad Accio-
 nem ipsius C. S. p'd vers' ipm C. f. hend'
 manutenend' ad quam idem C. f. necesse
 non het nec p legem terre tenetur aliquo
 modo respondi Unde p defectu sufficiend
 Narracon' in hac parte idem C. f. per
 iudic de Parr p'd Et q'd Parr ille casse-
 tur, &c.

Et p'd C. S. die q'd p aliqua p p'd C. f.
 iupius p'litando allegat Parr ipsius
 C. S. p'd cassari minime debet quia die
 p'd Parr p'd materiaq; in eadem content'
 p'd & sufficiend in Lege existunt ad
 Accionem ipsius C. S. p'd inde vers' pdia'
 C. f. hend' manutenend' quam quidem

Darr materiamq; in eadem content' idem **T. S.** parat est verificare & pbare p^{er} **Cur**, &c. Et quia p^{ro} **T. S.** ad **Darr** non respond' nec ill' hucusq; aliquant' deduc' idem **T. S.** pet' judic' & dampna sua occ'one p^{ro}dict' Convent'ionis frag' sibi adjudicari, &c. Sed quia **Cur**, &c.

In this Case it was adjudged, that where by the Grant of a Reversion, the Rent reserved upon a Lease for Years is well transferr'd to the Grantee, the Law also transfers to him the Covenant of the Lessee for the Payment thereof as incident to the Rent.

See also Demurrer to a **Darr** in Covenant 2 *Saund.* 164. and there it is pet' judic' & dampna sua occ'one p^{ro}miss' p^{ro}dict' sibi adjudicari, &c.

This Action was against Executors for a Heriot due upon the Death of their Testator; and the chief Cause of Demurrer was, that it was not shewn in the Declaration, that the Term granted to the Testator was commenced at the Time of his Death, by the Death of one **S. C.** or otherwise. Three Justices were for the Defendant, that the 3rd l. reserved for a Heriot was of the same Nature with a Rent which is to be paid during the Term, and not before the Commencement of the Term, nor after the End thereof; and here this Reservation should be constru'd most strongly against the Reserver, as in *Dyer* 377. a. and it seem'd to them that the Heriot for which the Plaintiff had brought his Action, was not due or payable by the true Intention of the Parties, because the Death of the Testator was before the Commencement of the Term, wherefore they concluded for the Defendant,

dant, that the Plaintiff should be barr'd. The
 Justice was for the Plaintiff, and deliver-
 his Opinion; wherefore it was clear to him
 the Heriot in question should be paid upon
 Death of the Testator, happen'd it at any
 time whatever, either before the Commence-
 ment, or after the End of the Term: But not-
 withstanding it was adjudged for the Defendant
 the other Three Justices, That the Heriot
 of the Nature of a Rent and not payable by
 Executors, and that a Heriot should go with
 Reversion as well as a Rent, and also that
 Grantee of the Reversion should have it.
See Demurrer al Narr. in Coven. 1 Saund. 109.
vide 112. where 'tis held, that altho' the
 breach of the Covenant of the Testator be by
 proper Default of the Executor, yet Judg-
 ment ought to be *de bonis Testatoris*, and
 a Judgment against an Executor ought not
 to be *de bonis Testatoris* if he be not na-
 tural Executor: And it is made a *Quære*, If it
 be sufficient to declare against him as Exe-
 cutor, without naming him Executor in the
 beginning of the Declaration? But the Repor-
 t of Opinion, that the Declaration being by
 was good enough, for upon the whole Mat-
 ter the Plaintiffs had declared against the De-
 fendant as Executor, altho' in the Beginning he
 was not named Executor, which is only Form,
 that the Plaintiffs might have Judgment for
 damages *de bonis Testatoris* upon the De-
 claration well enough, but it was not moved.
 That there was another Exception lay to
 the Declaration, *viz.* That a *Que* Estate
 should not be pleaded of a Term. *Cro.*
Eliz. 22.

7. Demurrer at Barr in Deba in B.
Reg.

Et modo, (Ec.) Et idem W. H. de-
vum Et injur quando, Ec. Et die
pdiat' C. actionem suam pdiat' inde b
eum here seu manutenere non debet
Quia die qd Narratio pdiat' materiam
in eadem content' minus sufficiend'
Legem existunt ad actionem pdiat' C. p
inde vers' ipm W. H. hnd' manentem
ad quam quidem Barr ipe idem
necesse non het nec p Legem terre te-
tur aliquo modo respondere, Et hoc
rat' est verificare, Unde p defectu su-
cien' Barr in hac parte ipe idem W.
pet' iudic', Et qd pdiat' C. ab actione
pdia' inde vers' ipm W. H. hnd' pcludi-
tur, Ec.

Et pdiat' C. die qd ipe p aliquo
pdia' W. H. supius plitando alle-
ab actione sua pdia' inde vers' W. H.
hnd' pcludi non debet quia
qd Narratio pdia' materiaq; in eadem
tent' bon' Et suffie in Legge existunt
actionem ipsius C. pdia' inde vers'
dia' W. H. hnd' manutened' quam
dem Narrationem materiamq; in eadem
content' ipe idem C. parat' est ve-
rare Et pbare put Cur', Ec. Et qd
pdia' W. H. ad Barr ille non resp-
nec ille hucusq; aliqualit' dedie idem
pet' iudic' Et debum suu' pdia' una
dampnis suis occone detencion' Deba
sibi adjudicari, Ec. Sed quia Cur',

2 Saund. 128, &c.

This was an Action of Debt upon an Argument; and upon the Argument agreed, if a Submission be to Arbitrators, and if they disagree, then to an Umpire, and Award and Umpirage are limited to the Day, there the Power of the Umpire is, unless that the Arbitrators have disagreed, declared that they will no more intermeddle. *Idem* 130, 132.

That if a Submission be to Arbitrators, so they make their Award to Morrow, and they cannot agree, then to an Umpire, so he makes his Umpirage to Morrow, or next Day, in this Case the Umpire cannot make his Umpirage on the Morrow. 130, 131.

Idem eundem 133. Where Arbitrators within Time limited may choose an Umpire, to make an Umpirage after the Time for their Award is determined.

Debt after Oyer of two several Sheriffs, the Defendant demurred to the Declaration; and upon the Argument it appeared that three Persons were jointly bound, and the Plaintiff declared against the Defendant only: But it was answer'd, that it did not matter whether the other Persons had sealed the Bonds, or not, then their Bonds were single, and if they had sealed, then the Defendant should have pleaded in Abatement, that the other Persons had sealed, and were living, and pray Judgment of the Bill; and the Court was of the same Opinion. *Vide* *And.* 290.

Demurrer al Parr in Debo in Cod Bar

Et p̄dicitur C. p. R. H. Attorū suūm
 & defendit vim & injur quando,
 Et dicit qd Parr p̄dicitur materiā in
 dem content minus sufficiend in
 existit ad ipm C. actōm suā p̄dicitur
 ipm Def' hēnd manutēnd, Quia
 ipa ad Parr p̄dicitur modo & forma p̄
 fact' necesse non hēt nec p Legem
 tenetur respondere, Et hoc parat'
 verificare, Unde pet' judic de Parr
 dicit', &c.

Et p̄dicitur C. ex quo ip̄e sufficiend
 teriam in Lege in Parr p̄dicitur ad actō
 suam p̄dicitur vers' p̄fat' C. hēnd man
 nend supius narrando allegabit qu
 ip̄e parat' est verificare, quam quib
 materiam p̄dicitur Def' non dedic nec
 eam aliqualit' respondū set verificatō
 admittere oīo recusat idem C. pet' ju
 cium & deba sua p̄dicitur necnon damp
 sua oīone detentōn heboz ille sibi ad
 dicari, &c. Vide Lev. Ent. 53.

The Action was, Debt against an Adm
 strator, and declared in the Detinet upon
 Demise to the Intestate for 129 l. due in
 Intestate's Life-time, and for 64 l. in his
 Time in the Debet & detinet: The De
 dant demurs, and adjudged that the Adm
 did not lie to charge him in the Detinet
 Part, and Debet & detinet for other P
 which require several Judgments, scilicet de
 nis pp̄d for the Arrears in his own T

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de bonis Intestat' for the Arrears due
ore his Death; and that the severing the
Sums in the Declaration is not sufficient,
he ought to have several Actions. *Vide*
ev. 74.

The like Demurrer to a Declaration of
ot for an Amerciament in a Court-Leet,
erein it is shewn that the Defendant was
ent and amerced, *Quod quidem Amer-*
ment' afferat' fuit p omnes Jur' ad
3. And the Court held the Declaration
First, Because it was not shewn to what
the Amercement was made, though
e Precedents are so, as *Rast. 553. a. & b.*
b.

Secondly, The Afferement ought to have
n by Officers elected by the Sheriff, and
by the Jury, and they have a special Oath
that Purpose, as *Hob. 129. Wilson vers'*
dingham in both Points, whereupon Judg-
nt was given for the Defendant. 3 *Lev. 206.*
Demurrer al Narr' in Debt. *Rast. Ent. 187,*
Aston. 96, 157. Winch. Ent. 186, 304.
mpf. 207. Clift. 288, 290.

8. Demurrer al Narr' in Formedon.

S to Parcel, the Defendant pleas *Non*
seoffabit; and as to the Residue, demurs
Infra etatem, Et pet' qd loquela
a remaneat usq plenam etatem.
r. 361.

Aliter secundm' *Aston. Ent. 403. als' 335.*

After a Special Imparlance, *Usq in Octab*
ch — *Ad quem diem hic ven tam*
pdia'

pdia' J. qm pdia' H. p Attornd
 pdia' & super hoc idem H. dic qd
 pdia' & materia in eadem content
 nus sufficiend in Lege existunt ad
 J. actionem suam pdia' vers cum
 manutenend, Qd ipse ad Parr
 modo & forma pdia' fac' necesse non
 nec p Legem terre tenetur responde
 Et hoc parat' est verificare, Unde p
 fectu sufficiend Narraconis in hac
 idem H. per judic & qd pdia' J.
 actione sua pdia' hend peludatur, &c.

Et pdia' J. ex quo ipsa sufficiend
 teriam in Lege ad Actionem suam
 vers p'lar' H. hend manutenend sup
 declarabit quam ipsa parat' est ver
 care, quam quidem materiam pdia'
 non dedic' nec ad eam aliqualit' respo
 set verificacōem ill' admittere omnino
 cusat per' judic & seisinam Ceti
 pdia' cum p'nd sibi adjudicari, &c.
 Coke's Entr. 335, &c.

9. Demurrer al Parr sur Dutes & Cl
 scdm, 2 Saund. 377, &c.

THE Plaintiff declares upon a Robb
 of 29*l.*—10*s.* of his own proper
 ney, and for other Goods in his Possession
 the Value of 39*l.*—19*s.*—9*d.* but did
 shew the Particulars of the Goods, nor
 they were his own. Defendants demur.

Et pdia' homines inhabitand in
 dredo de C. p J. U. Attornd suum
 & defend vim & injur quando, &c.

judic' de Parr ipsius C. p'dia',
 ia die q'd narr p'dia' C. matiaq; in
 em content' minus sufficiend' in Lege
 it ad p'fat' C. ad Actionem suam
 inde vers' ipsos homines inhabitand'
 und? p'dia' & q'd necesse non h'ent
 p' Legem terre tenentur aliquo modo
 ondere, Et hoc parat' sunt verificare
 e p' defectu sufficiend' Parr in hac
 te iidem homines inhabitand' in und?
 et pet' judic' de Parr ill', Et q'd
 ill' cassetur, &c.

et p'dia' C. die q'd p' aliqua p' p'dia'
 omes inhabitand' in und? p'dia' lupius
 gat' Parr ipsius C. p'dia' cassari mi-
 e debet, quia die q'd Parr p'dia'
 eriaq; in eadem content' bon' & suf-
 d' in Lege existit ad ipsum C. ad
 onem suam p'dia' inde vers' p'fat'
 omes inhabitand' in und? p'dia' h'end'
 utenend' quam quidem Parr mate-
 noq; in eadem content' idem C. pa-
 est verificare & p'bare put' Cur', &c.
 quia p'dia' homines inhabitand' in
 und? p'dia' ad Parr ill' non respond'
 illud hucusq; aliquo modo dedic' idem
 et pet' judic' & dampn' sua octon' p're-
 on' p'dia' sibi adjudicari, &c. Sed
 Cur', &c.

pon this Demurrer to the whole Declara-
 the Plaintiff remitted all Damages for
 Goods, and it was held that the Declara-
 was insufficient as to that Part, and that
 Owner ought to have an Action; yet the
 aration was held good as to the Money.
 and

and for what was therein well laid, and Plaintiff had Judgment as to the Money. And it is also observed, that the Plaintiff suing a common Carrier was responsible for the Goods to the Owner, and might well maintain an Action for the Robbery of them, he had laid his Declaration right.

10. Demurrer al Informacion.

THese Demurrers run by Way of Protestion and Plea over. The Defendant pray Oyer of the Information, Et eis lectur, qua lecta audita & p ipsos W. & J. C. intellecta queruntur se colpe pmissis, graviter verat, fore & inquietat hoc minus iuste, Quia ptestando qd Informacio predicta ac materia in eadem contenta minus sufficiens in Lege erit ad qm ipsi necesse non hnt nec p Legem terre tenentur respondere, Protestant etiam qd ipsi W. L. & J. C. vi & pmissis, &c. in & super Possessionem dñe Rñe nunc premissorum in Informacione predicta speciem non intraver intrum & ingressum fecer ac exit & pñcia in in usum suum p pceptis & huc trans ill p totum tempus predicta continuaver in contemptu dicte Domine Rñe nunc ac contra Leges suas p Informacione predicta supius fieri supponit pro pñto tamen iidem W. L. & J. C. Qd &c. and so justify. Vide Co. Ent. Simile idem 390. Pro pñto non Cur, simile & non Cur, idem 395. Simile B. Ent. 409. b. 410. b. 412. b.

11. Demurrer al Monstrance de Droit.

The Demurrer is also by Way of Protestation, as is above upon the Inquisition, *quia ptestando qđ Inquisitio pđia' ac matia in eadem content minus sufficiend in Lege existit, (Ec.) p plico tamen, (Ec.)* and so set forth their Right and Title. *Vide Co. Ent. 403, &c.*

12. Demurrer in Prohibicione.

Et modo ad hunc diem, (Ec.) Et idem **W.** defendi vim & injur' quand, Ec. omnem contempt, Ec. & quicquid, Ec. et dic qđ ipse non est psecut' in pđia' Cur' Christian' contra phibicon regiam inde direct' put pđia' **H. C.** qui m, Ec. p Parr suam pđia' supius ppon, Et de hoc pon se sup Patr, pđia' **H. C.** inde filiter, Ec. Sed pro consultatione in hac parte hend idem **H. C.** dic qđ Narratio pđia' modo & forma pđia' fact' & declarat matiaq in eadem content minus sufficiend in Lege existit ad ipsu **W. C.** a Decimis pđia' pđia' Cur' Christian' vers' pstat' **H. C.** petit' hend peludend qđq ipse Parr ille modo & forma pđia' fact' & declarat necesse non het nec p Legem esse tenetur aliquo modo respondere, et hoc parat' est verificare, Unde p dictu sufficiend Narraton pđia' **H. C.** si tam, Ec. in hac parte idem **W. C.**

M pre

per judicium & hze Dñi Reg de Consulta-
tacon sibi in hac parte concedi, &c.

Et p̄dia' H. C. quoad p̄dia' p̄litum
p̄dia' W. C. quoad hze Dñi Reg de
Consulte hend supius p̄litat ex quo ip-
se sufficiend matiam in Rege ad p̄dia'
W. C. a Decimis p̄dia' p̄ ipsum W. C.
in Cur Christianitat p̄dia' vers p̄dia'
H. C. per hend p̄cludend supius allega-
bit quam ipse parat est verificare quan-
tūdem matiam p̄dia' W. C. non ded-
nec ad eam aliqualit respond sed ver-
fication ill admittere omnino recusabit
per judic & quod p̄dia' W. C. nullus
heat hzeve de Consultacon, &c. Et qu-
Cur, &c. Vide i Saund. 140.

The chief Cause of Demurrer was, because
the Plaintiff did not alledge that the Corn
fenced in with the Underwood was his own
Corn. The Plaintiff's Counsel said, It was
no Matter whose Corn, being the Rector's
to have the Benefit of Tythe : But the Court
held the Prescription ill, for that the Plaintiff
could not give away his Wood to any other
for inclosing of Corn without paying Tythe
and so a Consultation was awarded.

Simile Co. Ent. 460. Winch. Ent. 561. 595, 564. alias 598, 571. alias 605, 608. 642.

13. Demurrer in Quare Impedit.

THE Bishop claims nothing but as Ordinary; Defendant R. H. claims the Admonition by Will; M. H. pleads, and the Incumbent demurs to the Declaration. Lev. Ent. 139, 140.

Et p̄dicta R. H. dic qd̄ Parr p̄dicta materialiter in eadem contentis minus sufficiens in Lege existit ad p̄dicta Eliz. actionem suam p̄dicta vers̄ ipsum R. hendi manutenendū, Quod ipse ad Parr p̄dicta in forma p̄dicta facit & declarat nec se non hēt nec p̄ Legem terre tenetur pondere, Et hoc parat est verificare, Et p̄ defectū sufficiens Parr in hac parte idem R. H. per Judicē, Et quod p̄dicta E. modo querens ab Accōne sua p̄dicta vers̄ ipsum hendi p̄cludatur, &c.

Judgment against the Ordinary, (&c.) under in Demurrer to the Incumbent.

Et p̄dicta E. modo querit ex quo ipsa sufficiens materiam in Lege in Parr sua ad ipsam Eliz. ad Accōnem suam p̄dicta p̄dicta R. H. hendi manutenendū superius clarabit quam ipsa parat est verificare quam quidem materiam p̄dicta R. H. hendi nec ad eam aliquatenus respondere verificationem illam admittere oīo recusat per Judicē & hęc Ep̄o unacum dampnari, &c. sibi adjudicari, &c. Et quia p̄dicta E. Vide Lev. Ent. 140.

Upon this Demurrer it was adjudged, that the same Person being Patron and Parson of the Church, the Heir, not the Executor, shall present. *Vide 3 Lev. Rep. 47.*

And Note, That 3 Lev. 59. the Plaintiff shall not recover Damages where he recovers his Presentation, although the Six Months be past. *Vide Lev. Rep. 435, &c. Et vide C. Ent. 493, & 494.*

14. Demurrer al Scire Fac.

ET p̄dict' les Pledges crabe Opre Count & Demurre al Scire fac. Quibus etiam t̄cis & auditis iidem H. & D. dic qđ p̄dict' h̄ze de Scire fac. supius menconat matiaq; in eodem content minus sufficiens in lege existit ipsos H. & D. cum p̄dict' 240 l. in bagis p̄dict' content de denar suis p̄p̄t onerand, &c. Et per qđ h̄ze de Scire fac. p̄dict' vers eos cassetur, &c. Et p̄dict' f. dic qđ p̄dict' h̄ze de Scire fac. supius menconat matiaq; in eodem content bon & sufficiens in lege existunt ipsos H. & D. cum p̄dict' 240 l. in bagis p̄dict' content de denar p̄p̄t ipsos H. & D. onerand quod quidem h̄zebe materiamq; in eodem content idem f. parat est verificare & p̄bare put &c. Et quia p̄dict' H. & D. ad h̄ze non respond nec illi hucusq; aliquando dedie idem f. ut prius per iudic & executionem vers bon & catale p̄dict' H. & D. ad valenc 240 l. p̄fat' J. T. replegiat &c.

libat, Et quia Cur, &c. Et Iudic p
er. Vide Thes. Brev. 277. Simile idem 269.
in causis.

Aliter scdm 2 Saund. 341, &c.

Et idem H. dic qd hze de Scire fac
modo & forma pdicta Cur hic im-
rat & psecut ac materia in eadem
tent minus suffic in lege existit ad
os M. R. H. & P. executionem suam
de pdict' 160 l. vers eundem H.
manutenend, Qd ipse ad breve
Scire fac ill modo & forma pdict'
neceffe non het nec p Legem terre
etur respondere, Unde per iudic de
de de Scire fac pdict', Et qd pdict'
R. H. & P. ab Executione sua pre-
vers eum hend pcludantur, &c.

Et pdict' M. R. H. & P. ex quo ipsi
ciend materiam in lege in brevi
superius allegaver ad executionem
pdict' vers pdict' H. de pdict' 160 l.
forma pdict' hend quam ipsi parat
verificare quam quidem materiam
H. non dedic nec ad eam aliqua-
respond sed verificacōd ill admit-
oio recusat ut prius per iudic &
utionem suam pdict' de pdict' 160 l.
s eund H. sibi adjudicari, &c. Et
Iustic, &c. Et Iudic p Quer.

Trespas.

Demurrer in Trans super Casum:
de ante Demurrer al Parr in Case.)

16. Demurrer ad Narr in Warrant
Charte scdm. Co. Ent. 692. post
del fait,

Quo lco audito idem H. Dom
dic qd Narr pdia' in forma pdia'
faa' & declara' ac matia in eadem
tent & pdia' Scriptum Declaratiod
forma pdia' faa' minus sufficien in
existit ad ipsum H. H. Accon sua
pdia' ad ipm H. Dom M. hend man
tenend, Adqz ipe ad Narr pdia' in
ma pdia' faa' & declara' necesse non
nec p Regem terre tenetur responder
Et hoc parat est verificare, Unde p
scdm sufficien Narr pdia' H. H. in
parte idem H. Dom M. per jud
Et quod pdia' H. H. ab Actione
pdia' vers ipm H. Dom M. hend p
cludatur, &c.

Et pdia' H. H. ex quo ipe suffici
materiam in lege ad Accon suam
dia' vers pzetat H. Dom M. hend m
nutenend superius declarabit quam
parat est verificare, quam quidem
teriam pdia' H. Dom M. non deb
nec ad eam aliqualic respondet ver
cacon illi admittere oio recusat ut p
pe iudic, Et quod pdia' H. Dom
tenta & coiam pdia' cum ptin eib
H. H. Narr &c. Et quia Iustic,
Et Iudic p Quer.

17. Demurrer al Parr in Waste:

Et p̄dix' Def' p C. N. Attorū suū
 ven' & defend' vim & injur' quan-
 do, &c. Et dic' quod h̄e p̄dix' & mate-
 ria in Parr p̄dix' content' minus suffi-
 cien' in Lege existit ad p̄dix' Quer' Ac-
 tione suā p̄dix' vers' eos hēd' manu-
 tenend' qđq' ipsi ad h̄e & Parr ill' modo
 & forma p̄dix' fundat' & fact' necesse non
 sūt nec p Legem terre tenentur respon-
 dere, Et hoc parat' sūt verificare, Un-
 de p defectū sufficiēd' h̄is & Parr in hac
 parte p̄t' judic' & qđ h̄e cassetur.

Et p̄dix' quer' ex quo h̄e p̄dix' suf-
 ficiens in Lege ad Actionem suā p̄e-
 dia' vers' p̄lat' Def' hēd' manutenend'
 supius declarabit que ipse parat' est ve-
 rificare que quidem h̄e & materiam
 p̄dix' non dedic' nec ad ea aliquāliter
 respond' set verificatōd' ill' admittēre oīo
 recusat p̄t' judic', Et qđ h̄e suū p̄d'
 bonum adjudicetur ac damna sua oc-
 cione vassi p̄dix' sibi adjudicari, &c. Vide
 Cl. Ass. 41. & vide Rast. Ent. 695.

*Aliter upon Writ and Count, 2 Rastal's
 Ent. 147. b.*

Et p̄dix' A. in pp̄d' p̄sona sua ven' &
 defend' vim & injur' quando, &c.
 Et dic' qđ materia in h̄i & Declar' p̄e-
 dia' content' non est sufficiēd' in Lege ad
 Actionē p̄dix' p p̄dix' B. vers' eandem
 A. manutenend' nec ad eundem A. ad

eam respondere ponend, Et hoc parat est verificare, &c. Unde per judic si idem B. aliquam Actionem in hoc Casu manutenere debeat, &c.

Et p̄dicta B. ex quo materia in h̄i & Deit p̄dicta spec̄ sufficiend est in Lege ad Actionem p̄dicta p̄ eund B. manutenend ac eund A. ad eam responsur ponend, Ad quam quidem materiam idem A. nihil respond per judic & dampna sua sibi in hac parte adjudicari, &c. Et quia Cur, &c.

Vide Demurr' al Narr' in Waste, 2 Rast. Entr. 695.

Aliter ad Narr' tantum, Secund' 3 Lev. Rep. 130. in Case pur Waste.

Et p̄dicta W. p̄ A. R. Attornd suum vend & defend vim & injur' quando, &c. Et dic qd Narr' p̄dicta in forma p̄dicta facit & declarat necnon materia in eadem content' minus sufficiend in Lege existit ad p̄dicta S. Actionem suam p̄dicta vers ipm W. hendi seu manutenend, Quod ipe ad Narr' p̄dicta modo & forma p̄dicta facit & declarat necesse non het nec p legem Terre tenetur respondere, Et hoc parat est verificare, Unde p defend sufficiend Narr' p̄dicta S. in hac parte idem W. per judic & qd p̄dicta S. ab Actione sua p̄dicta vers ipm W. hendi pcludatur, &c.

Et p̄dicta S. ex quo ipse sufficiend materiam in Lege ad Actionem suam p̄dicta vers p̄fat' W. hendi manutenend superius

as declarabit quam ipe parat' est
 rificare quam quidem materiam p'dict'
 non debet nec ad eam aliquant' re-
 and set verificatione ill' admittere oia
 usabit idem S. per iudic' & dampna
 occone p'miss' sibi adjudicari, &c.
 quia Iustic', &c.

It is said, that Matter was agreed upon by
 Parties. *Idem* 132. *Vide le Report.*

Thus far concerning Advantage to be had
 a General Demurrer to a Declaration.

But it is further to be observed, that a De-
 rrer may be either General, or Special.

1. General, without shewing any Cause,
 that it is insufficient in Law.

2. Special, wherein the Party sheweth
 rein it is not sufficient, and doth not re-
 on that Point.

And as he that demurreth generally con-
 ch all such Matters of Fact as are well
 sufficiently pleaded to be true; so he that
 urs specially, hath waived all other Mat-
 of Form, and can take no Advantage of
 other Matter of Form but what he hath
 en of, yet he may take Advantage of any
 Matter of Substance, 10 Co. Rep. 88.
 commonly the Want of Form is made
 of the Causes of Demurrer.

Edward Lutwych in his Entries, Vol. 1.
 upon Demurrer to a Plea in Abate-
 saith, That for avoiding of an imper-
 Prolixity, no common General De-
 rrers shall be inserted in his Book, amongst
 which

which he computes all such Demurrers which the Causes are shewn, as follows, *Quod placitum est repugnans dum incert' & caret forma*, or to that Effect which Chief Justice *Hale* said, was a *Trap of the Law*, and would not allow it a Special Demurrer: And he adds, that the Statute of Demurrers, 27 *Eliz. cap. 5.* requires that the Cause of Demurrer shall be formally and particularly express'd, agreeable to some Measure to the Practice before the Statute, which was to debate the Matter of Demurrer at the Bar, and sometimes at the Bench, before the Demurrer was entered. *Vide 1 Vent. 204.*

Causes of Demurrer.

Sometimes the Causes of Demurrer are placed in the Middle, and sometimes in the latter End. In the Middle, as thus;

Et p'dict' B. p. C. Attoꝝ suum & defend' vim & injur' quando, &c. dic' qd' parr' p'dict' materiaꝝ in caption' content' minus suffic' in Lege existit p'dict' A. accion' suam p'dict' vers' B. h'nd' manutenend', Qd'q' ipse parr' ill' modo & forma p'dict' fact' & clarat' necesse non het nec p' legem tenetur respondere & pro causis materionis in lege super parr' p'dict' B. scdm' formam Statuti in hujusmodi casu edit' & p'bis ostendit Cur' hic causas sequen' videlicet, Eo quod J. non concludunt parr' suam p'dict' apud

In the Middle.

dele, Per quod actio accrebit eisdem
 & J. ad erigendū & hēnd de eod B.
 322 l. 13 s. 4 d. in Parr p̄dīa J.
 J. superius menconat, &c. Et hoc
 erat est verificare, Unde p defectū suf-
 ficientem Parr in hac parte idem B. per
 dic, Et qđ p̄dīa J. & J. ab actione
 p̄dīa vers ipm B. hēnd p̄cludan-
 &c.

If the Causes be placed at the latter End,
 then it is only adding at the very End;

Et p causis moracionis in lege sup At the End.
 Parr ill idem A. scdm form Statuti
 humoi Casu nup edic & p̄vis ostendit
 hic has causas sequen vizē, Eo qđ
 Parr p̄dīa non apparet quomodo p̄-
 & C. seiscit fuit de p̄dīa Ome Ballii
 ranches in Parr p̄dīa spee nec quod
 vel titlum idem C. fuit in eodem
 &c, Et quod Parr ill est incerta in-
 ficiens & caret forma, &c. Vide Reg.
 ac. 153.

Some Special Causes of Demurrer, as set out
 in printed Precedents.

Quod Quer non profert hic in Cur In Audita
 scriptum Relaxationis in Parr Querela.
 p̄dīa supius spee qđ ipe per legem terre
 terre debuit, &c. Bro. Met. 70.

In Casu sur Trover.

Et p causis moracionis in lege scdm
 formam Statuti demonstrat & Cur
 ostendit has subsequentes videt,
 Qđ

Quod p̄dicta J. non monstrabit p̄ Narrationem suam p̄dicta quo die vel anno ip̄s J. de bonis & catallis p̄dicta possessionem fuit vel quo die & anno boni & catalli p̄dicti ad usum ipsius W. debener, ac quod narratio p̄dicta oīo incerta & imperfecta existit. Vide Cl. Ass. 235.

Aliter in Case pur stopping und Water Course in Regia Via.

Et p̄ Causis moracionis in lege demonstrat & Cur hic ostendit quod p̄dicta p̄ Causa actionis suis allegat quod p̄dicta Regie vie in Narratione p̄dicta mentem nat̄ rationis Obstructionis p̄dicta Agere sunt adeo superflue ut Inhabitand in p̄dicta suagiis suis in Regiis viis ille ab ip̄s maximo piculo accedere seu transire non potuissent, p̄ qua causa nulla p̄dicta ris p̄sona Actionem suam p̄ superfluitate Regie vie here possit, &c. Vide Winch. Ent. 49.

Aliter in Case sur Bargain de Certi Assumpcion a fair Estate, secundum Ral. Ent. 6. b.

Et p̄dicta B. in p̄p̄ p̄sona sua vendit, &c. Et per auditum Wille p̄dicta, &c. qua lea & audita die quod ex quo materia in billa p̄dicta continet in se quandam Convenconem in quo Casu p̄dicta A. Actionem suam Convenconis & non deceptionis secundum Legem Angl̄ in hac parte impetrasse debuit licet idem B.

et materiam in eadem Billâ contentam
cessare non debet nec tenetur per legem re-
spondere per Iudicem, Et quod Billâ predicta
assatur, Et.

Upon Assumpsit to pay the Debt of a
Third Person,

Quod non apparet per Narrâ predictâ quod
est aliquod Memorandum aut pre-
dicta in Narrâ predictâ spec in Scriptâ sig-
nata per ipsum A. aut aliquam aliam personam
ipsius A. legaliter autorizatam prout
venit secundum formam Statuti in huiusmodi
casu nuper editi et probis, Et quod Narrâ
predicta est incerta insufficiens et caret for-
ma. Vide Reg. Plac. 144.

In Covenant.

Quod non apparet in Narrâ predictâ quod
Conventio predicta in Narrâ predictâ supe-
rioris spec de qua predicta A. et J. actionem
in predictâ produxit et superius narraverit
tractat ac etiam ad eo quod Conventio illa
lege se non extendit ad prædictam summam
sed per Narrâ predictâ post mortem predictâ E.
est fore suppositum Accetiam per eo quod in
per prædictam allegatur quod eadem summa 20 l.
est fuit et non solum ad festum An-
nuntiationis beate Marie Virgini præ sequens post
mortem predictâ E. et quod eadem E. obiit
die 7. tum prædicta Sicut predicta 20 l.
predictâ festum Annuntiationis beate Ma-
rie non fuerit arretrâ per spacium dimidii unius
anni præ sequens post mortem predictâ E.
et. Et. Unde, Et. (ut in al.) Co.
115. a. Aliter

Aliter sur Policy de Assurance.

Quod p̄dict' G. non monstrabit C
hic per Parr suam p̄dict' qđ ip̄
idem G. tempore confectō Script aff
curanc p̄dict' fuit aliquod interesse
concern in Nave p̄d vel in apparatu
vel qđ ip̄e idem G. tunc fuit aliquod
cōnabilem causam facere assurenc
per eandē navem Et qđ Parr p̄dict'
duplex incert & caret forma, &c. Vid
Reg. Plac. 143.

That the Breach of Covenant contains a Ne
gative Pregnant.

Quod constat p Parr p̄dict' qđ redd
p̄dict' virtute Statut de Usibus
possession transferend est translat ab ip̄
H. & E. p̄dict' M. C. ac ad ip̄am solv
debit, Neciam qđ fractio Conventi
p̄dict' continet Negativum pregnans
delt non solution reddit p̄dict' p̄d H. & E.
p usu p̄dict' M. in quo implicitum
qđ est solut p̄dict' H. & E. licet non
usu p̄dict' M. Et hoc, &c. Unde,
Vide Bro. Met. Nov. 121.

There must, it's said, be a special Demur
to a Negative Pregnant, which doth also con
tain in it an Affirmative, and also to an Arg
mentative Plea, which concludes nothing
rectly but only by Way of Argument or Rea
soning also to a double Plea, for a General
Demurrer doth admit them to be good, for
doth not shew any Fault in them as a Special

demurrer doth. *Vide Reg. Plac. 134, 135. &*
Reg. Tit. eundem.

In Debt.

Et p^r Causis mozacon in lege in hac
 parte idem H. juxta formam Sta-
 in humoi Casu edit & p^rvis Cur hic
 monstrat has Causas sublequend vi-
 t p^r eo q^d p^rdia' S. in Parr sua p^rdia'
 monstravit quomodo nec qualiter
 M. A. fuit possess. de ten^tis in Parr
 us S. sup^rius mencōnat p^r quam p^rlo-
 m die Terminus Annoꝝ excedend tri-
 annos fuit concess. nec quando inci-
 bat, ac p^r eo q^d Parr ille est in se re-
 gnans incertum & caret forma, &c.
 ur. 654.

Et q^d in Scripto non sit mencō de ap-
 p^rcon Sigilli, &c. Bro. Red. 258. Vide
 Ent. 190.

In Formedon.

Et q^d p^rdia' H. H. in Parr sua p^rdia'
 non ostendⁱ seu allegat q^d aliquis
 nator cepit Exple^s Manerii & ten-
 p^rdia' p^r p^rdia' H. sup^rius petit Ace-
 m eo q^d moꝝ p^rfat M. P. in Parr p^ro
 ius mencōnat non allegatur in Parr
 Acciam p^r eo quod in Parr p^rdia' non
 gat q^d de p^rfat M. P. in Parr p^rdia'
 rius mencōnat revertit jus, &c. co
 pe obit sine hered^e masculino de cor-
 suo exeu^d sed solummodo q^d de ip^so
 Willo

Willo rebertit p formam, &c. 2 Lut. 972, 973.

In Prohibition.

Et p Causis moracionis in lege jura forma Statuti in humod Casu in nup edit & pvis idem T. Cur hic monstrat & ostendit qd Parr pdia continet duplicem, multiplicem & infundam materiam, &c. Vide Co. Ent. 457 & vide 2 Co. fol. 49. b. &c.

Sur Scire Facias.

Pro eo quod non apparet p hys pdia de fd fac qd pdia' H. M. ad quod tempus huit pdia' 160 l. aut quem denat inde in manibus suis in manibus aliquor Officio suor tute hys Dni Reg de fd fac super spec ac p eo qd nulla executio vers pdia' H. M. sup Retornd hys de Scd fac hzebi de Scd supius menconat eman debet. Vide 2 Saund. 341.

Upon this Demurrer, Judgment was against the Sheriff, and confirm'd in Error for returning Seizure of Goods upon a *Fieri Facias* 200 l. *ad valenc.* 160 l. and that they were rescued out of his Officer's Custody, so that he could not levy the Debt, and that S. had no other Goods whereupon to levy; and it was also held, that by the Seizure of the Goods in Execution, the Sheriff had a Property in them, so that he might reseize them and

m, as well when out of his Office as be.
Idem 344.

That where in the Executing of a *Fieri Fa-*
 the Sheriff does not misbehave himself, he
 not be charged in Debt, or upon a *Scie*
 as, if it appears not by the Return that he
 the Money in his Hands. *Id.* 345.

That where upon a *Fieri Facias* the Sheriff
 rns, that the Goods seized remains in his
 ds *ob defectum emptorum*, he shall not be
 ged in Debt or *Fieri Facias*. *Id.* 345.

In Waste.

T p̄dīc' M. p. M. B. Altorū suum
 vend & defendi vim & injur quando,
 Et dic qd bene & verum est qd in-
 Civit p̄dīc' her t̄lis consuetudo quae
 T. fit superius allegavit Et ex
 p̄dīc' p̄dīc' apparet qd p̄dīc' T. B.
 stum suum p̄dīc' non legavit p̄fat
 T. L. & M. reversionem Mesuagii
 nisi p̄ ista verba viz. omnia terre
 reddit & servit sua q̄ ip̄e tempore
 Testam p̄dīc' in Civit p̄dīc' vel
 urb ejusdem in manibus ipsius
 existebant & restabant hēd & te-
 p̄dīc' T. B. T. L. & M. & non re-
 on Mesuag p̄dīc' p̄ expressum noēn
 tionis Et dic qd liber tenē Mes
 tempore Legac p̄dīc' existebat & re-
 t in p̄dīc' M. per formam Dimiss.
 Sicq̄ nihil Reversion p̄dīc' Mes
 generalia verba p̄fat T. B. T. M.
 per Legac p̄dīc' transire potuit
 N Per

pet judic Et quod p̄dia' C. fit, &c. al
Accone sua p̄cludat, &c.

Et p̄dia' C. fit ex quo p̄dia' M. ne
dedic quin reberfio Mest. p̄dia' tempo
Legat p̄dia' fuit in p̄dia' C. D. nec qu
idem C. Legat in Part p̄dia' spec mod
& forma in eadem Part content fec m
quin p̄dia' M. fec p̄dia' Vastum in Part
spec pet judic & qd p̄dia' M. de Vast
p̄dia' conbineatur Et quia Justic, &
Vide Rast. Ent. 695. Et Judic p̄ qu
post multas mocones Argumenta & ma
turam coicacōnem per Justic, &c.

And thus much for the Causes of a Demur-
rer to a Declaration: And it is to be noted
that after Demurrer join'd, the Judges are
to give Judgment according as the very Right
the Cause and Matter in Law shall appear
without Regard to any Want of Form in a
Writ, Return, Complaint, Declaration, or other
Pleading, Process, or Course of Proceeding
except those Causes only which the Party
in his Demurrer shall particularly set down.

Also if there be a Demurrer for Part, and
Issue for Part, it is usual for the Court to give
Judgment upon the Demurrer first, but it is
in the Discretion of the Court to try the Issue
if they please. See *Co. Lit.* 71, 72. & *27 Eliz.* 5.

Of pleas, and General Bars.

Of a Plea in Bar, &c.

These Things being premised, we will next proceed to the Plea or Bar in several Pleas, with the respective Replications, Replies, and other Matters relating to the same.

And herein it is to be observed, that Pleas are divided into General, and Special.

The General Pleadings are such as these, Of General Pleas.

Non Assumpsit.

Non est factum.

Non Culpabilis.

Nil Debet per Patriam.

Non Detinet per Patriam, and such like.

And they seem to be so called, because they are so generally used and known, that upon naming them, either Party knows both the Matter and Manner of them.

Let I think (properly speaking) that those Pleas may be called General Pleas, which require no Replication; but immediately tender Issue to the Plaintiff, as these before mentioned. For where they require a Replication, Of Special Pleas.

Ne Administrait, Ne unques Executor, Ad-

ministratio nunquam Commiss. Son Assault Demer
per Dures, per Minas, and the like, (and the
 under Counsels Hand, before the Plaintiff
 be obliged to receive them) they may there-
 fore be called Special Pleas.

Again, there are other Special Pleadings
 more properly so called, which have no set-
 tled Form, but are specially drawn on either
 Side, as the Case requires; one Party endeavouring
 to make good and enforce his Action, Title,
 Debt or Damages; and the other striving
 to defend and save himself, his Land, Money,
 Goods or Possessions.

And tho' these last Sort have no settled Form,
 yet Time hath produced store of Precedents in
 the many Volumes now extant, which may
 very well be adapted to the necessary Circum-
 stances of either Party, by a skilful Hand.

Yet here one Objection may offer itself
 (*viz*) That 'tis not material for Clerks or At-
 torneys to trouble themselves about such Special
 Pleadings, since they are to be settled and
 subscribed by Counsel.

But this is easily to be answered by those
 who not only find the Profit of their Labour,
 but also a quicker Dispatch, and better Under-
 standing of their Business.

Now let us return to our Purpose, and ob-
 serve, That if the Defendant have no Advantage
 of Abatement, or Demurring in Law, he
 must plead in Bar of the Action.

Therefore we will next consider the Plaintiff's
 Action, and what Pleas the Defendant
 may plead in Bar.

And here again it is obvious to observe
 That before the Defendant plead Special

he may plead such General Bars as follow,
(viz.)

- A General Release, or Defeazance.
- An Acquittance; or
- Acceptance of any other Thing, &c.
- Tender of Amends.
- Concord, or Arbitrement.
- A former Judgment, or Recovery.
- Statute of Limitations.
- Disability of the Plaintiff, or Privilege of Defendant, &c. as the Case requires.

General Bar by Release pleaded.

T p̄dix' C. D. p̄ J. S. Attoꝝ suum
venit & defendi vim & injur quan-
te. Et dic qđ p̄dix' C. W. actionem
m p̄dix' versus eum here non debet
ita dic qđ p̄dix' C. per nomen C. W.
P. in Com Hunt Gen post confectio-
n Indentur p̄dix' scilicet primo die
vembꝝis Anno, (Te.) apud P. p̄dix'
oddam Scriptum suum Relaxacōis
quod idem C. sigillo p̄dix' C. signat
in Cur p̄fert cujus dat' est eidem
& anno relaxabit remittit & omnino
se p̄ se Hered' & Executoꝝ suis imper-
petuum quiet clam eidem C. p̄ nomen
D. de L. in dicto Com Gen omnes &
animos Accōnes Personales Sextas
herelas Debit' Execucōnes & Transg
as vel que unquam ante tunc fuit
seu in futur quovismodo extunc here
set versus p̄dix' C. racōne vel causa
acunq; ab origine Mundi usq; in diem

In Covenant.
The Defen-
dant pleads a
Release of all
Actions Per-
sonal.

* A Defen-
dant pleaded
a Release,
and said not
Quod hic in
Cur. profert,
&c. and Plain-
tiff demurr'd,
and shew'd it
for Cause.

consecutionis ejusdem scripti Relaxationis
Et hoc parat' est verificare Unde petit
judicium si p'dict' C. contra p'dict' Scrip-
tum Relaxationis sue p'prium actionem
suam p'dictam versus eum here debeat
Ec.

In Debt.

ff. **E**t p'dict' R. p— Attorn' suum
Et def. vim Et injur' quando,
Et dic' quod p'dict' H. actionem suam
versus eum here non debet quia die
post tempus consecutionis scripti p'cedit
scilicet (tali die Et anno) apud (Ec.) idem
H. per quoddam scriptum suum Re-
laxationis q'd idem R. sigillo ipsius
signat' hic in Cur' profert cujus dat' e-
iusdem die Et anno remisit relaxavit
omnino p' se Hered' Executor' Et Alios
suis imperpetuum quiet' clam' eidem
p' nomen (Ec.) omnes Et omnimod' ac-
tiones personales sec' querel' Et deman-
que versus ipsum R. tunc hinc seu qu-
vis modo extunc in futurum here poss-
ratione quacumq' a principio Hum-
usq' diem consecutionis ejusdem scrip-
ti Relaxationis Et hoc parat' est verificare
Unde petit judicium si p'dict' H. actionem
suam p'dictam versus eum here debeat,
Et

Repl.

Et p'dict' H. dicit quod ipse p' aliquo
p'allegat ab actione sua p'dicta habend' p-
cludi non debet quia dicit quod p'dictum
scriptum Relaxationis non est factum
suum Et hoc petit q'd inquiratur p' p'ria
Et p'dict' R. filie Jo, Ec.

Vide Plac. Gen. 248, 346, 347. Thomps. 19
429. Han. 103, 104. Bro. Vad. 503. Bro. R.
186.

A. versus B.

Quando (Ec.) Action non (Ec.) Quia die qd post confectionem Scripti obligatorii pdicta' pdictus A. p quoddam scriptum suum Relaxationis quod idem B. hic in Cur pfert gerend dat decimo die Maii Anno septimo supradicto Et eidem B. post confectionem ejusdem Scripti obligatorii scitit decimo tertio die ejusdem mensis Maii Anno supradicto apud D. pdicta' primo delibet p nomen A. S. de D. in Com A. Neom remisit relaxabit omnino p se Et heredibus suis imperpetuum quiet Clam eidem B. p nomen A. S. de D. pdicta' Gen omnes Et omnes Actiones deba debie Bille Obligationes Judie executiones Et demandaciones que versus eundem B. tunc habuit vel que ipse Hered Executo Administrator vel Assignati sui vel aliquis eorum ad aliquod tempus extunc habere possint vel deberent vers ipm B. Hered Executo Et Administrator vel alii eorum p aliqua materia sive causa quacumq; a principio Mundi usq; diem confectionis ejusdem Scripti Relaxationis Et hoc paratus est verificare Unde et judie si pdicta' A. actionem suam pdicta' versus eum here debeat, Ec.

Defendant pleads a Release, which tho' it bears a former Date, was first delivered after the making the Bond, &c.

Precludi non (Ec.) Quia die quod prelatum Scriptum Relaxationis liberat fuit dat B. pdicto decimo die Maii quo die idem Scriptum gerit dat Absq; hoc quod Scriptum Relaxationem primo delibet

Repl.

Traverse.

verat fuit placit B. post confectio-
scripti Obligatorii pdict' put idem
supius allegabit Et hoc parat est ver-
ficare Unde per judicium & debum suum
pdict' unacum dampnis suis occasione de-
tentionis debi illi sibi adjudicari, &c.

Issue upon
the Traverse.

Et pdict' B. die quod scriptum
relaxationis pd' primo delibat fuit eidem
B. post confectioem pdict' scripti Obliga-
torii put ipse supius allegabit Et
hoc pond se super priam Et pdict' B.
fuit Ideo, &c.

Vide 1 Bro. 177. Pl. Gen. 348. Bro. V.
505, 514.

Solvit denar ante diem Orig Et quod
dedit Relaxationem. Cl. Aff. 129.

A Deed taketh Effect by the Delivery, and
a Jury shall be charged to enquire of the De-
livery, but not of the Date; and the Time of
the Date is presumed to be the Time of the
Delivery, unless the contrary appear.

Defeazance
pleaded.

Note, That in Debt upon a Bond, dated
Apr. 8. Anno 16 Car. 2. The Defendant pleaded
ed, That after the making of the Bond, viz.
the same Day and Year the Plaintiff made
him a Defeazance, and thereby promised, &c.
That if he did not before the last of June pro-
duce Witnesses to prove, that the Money
the Condition mention'd was a true Debt, and
that the Defendant before the making of the
Bond had promised to pay it, then the Bond
should be void; and avers, that the Plaintiff
did not produce Witnesses to make such Proofs
&c.

To which the Plaintiff demurred, and the
Court gave Judgment for the Plaintiff, be-
cause

If the Defendant had pleaded the Defeazance to be made after the Bond, and not at the same Instant: But *Saunders* says, *Et hoc non consulit ut mihi videtur*; for altho' the Condition of a Feoffment of Lands ought to be contained in the same Deed, or in another made and sealed at the same Time; yet it was clear Law, and the common and usual Practice was, that a Bond or Statute might be defeated by a Defeazance made afterwards, *Co. Litt. 207. Cro. Eliz. 755. Vide 1 Rep. 2. pag. 47, 48.*

And the same Law of a Release to defeat a former Bond or Judgment.

As to the Pleading of Defeazances, *&c.* you may find them in the Title of *Debt*, in the fourth Part; but I will add one here for Examples sake.

Defeazance pleaded to an Action of Debt upon a Judgment.

Actio non, &c. Quia die quod post
judicium p̄dict' in forma p̄dict' red-
& ante exhibitionem Bille p̄dict' scilicet
& anno, &c.) apud Westm in Com
agreat & concordat fuit p̄ quod
scriptum indentat int̄ p̄dict' C. per
C. C. de &c. ex una parte & quen-
A. C. & p̄dict' C. C. p̄ noia, &c. ex
tra parte Cujus quidem scripti alte-
partem sigillo ipsius C. sigillat idem
hic in Cur p̄fert cujus dat̄ est die &
supradictis Quod p̄dict' C. in Judi-
p̄dict' relaxaret & acquietaret p̄dict'
C. (as in the Defeazance) Et hoc, &c.
Unde

Unde, &c. Vide Thomps. Ent. 434. & 2 M
Intr. 231.

Debt sur Recogⁿ Bar p Indemⁿ
Defeazancie p solutione 20 l. Ali die qu
Def. solvit & Rept quod non solv
1 Bro. 174.

Vide Winch. Ent. 207, & 237. & vide R
183, 184, &c. sed vide part. 4. Instr. Cleric

A. Exec' de B. versus C.

C. pleads a
Release made
by H. another
Exec. of B.
unto one E. F.
who was also
bound with
the said C.

A C^on non, &c. quia die quod ip
C. & quidam E. F. p^odic^t 20
Junii Anno Regni dicti Dⁿi Reg
nunc, &c. septimo apud G. p^odic^t in p
dic^t Com^o L. p p^odictum Scriptum Ob
gatorium in Parr' p^odic^t sup^oius specit
concesser' se teneri p^ofat B. in vita sua
p^odic^t 50 l. in Parr' p^odic^t menconat
bend' eidem B. cum inde requisit
sent Et ad eandem soluc^oem bene
deliter faciend' obligaver' se & utrum
eor^u p se p toto & in solido Hered' &
cuto^r & Administrat suos firmit p id
scriptum quodq^u post confecti^oem p^o
scripti Obligato^rii scit^o p^omo die Jul
Anno septimo supradicto p^odic^t B. ap
G. p^odic^t in p^odic^t Com^o L. condidit tes
mentum & ult^o voluntat^o suam in ser
tis Et p eandem ult^o voluntat^o suam co
stituit & ordinavit p^odic^t A. & quenda
H. J. Executors testamenti sui p^odic^t
postea apud G. p^odic^t obiit post cui^u
mortem p^odic^t A. & H. onus execu^ois
stam p^odic^t sup se suscep^o Et p^odic^t
existend und Executor^o p^odic^t B. ut p^o

postea scilicet decimo die Novembris
anno septimo supradicto apud G. pdict'
nōen (Ec.) p scriptū suū Relaxatio-
is quod pdict' C. sigillo ipsius H. signat
in Cur' pferat cujus dat est eodem
anno die Novemb Anno septimū supra-
cto p se Hered' Executoꝝ & Admini-
tratoꝝ suis remisit relaxavit & imppe-
um quiet claud pstat E. F. qui p scrip-
pdia' simulcum eodem C. pstat B. ut
errur in deho pdict' tenebatur & obli-
gatur p nōen (Ec.) omnes & omnimo-
s Nationes (Ec.) a principio Mundi
que diem dat pdict' scripti Relaxatio-
is Et hoc (Ec.) Unde, (Ec.) Vide Bro.
d. 513.

Note, That one Executor may convey the
goods, or release Debts without his Compa-
ny, and that any one may do as much as
together. *Hill. 48 Ed. 4. 14. 15.*

But it is said to be otherwise of Administra-
tion, because they have but one joint Autho-

And that an Executor may release before
Probate of the Will or Testament; but can-
not have Debt before the Probate, *5 Co. 28. a.*
4. 18.

Executor dedit Def. Relaxation'. *Winch. Ent.*

Release in Annuity, *Plac. Gen. 104.*

Release pleaded in Case. *Vide Bro. Vad. 98.*

6. Read's Dec. 105, 111. Cl. Aff. 116, 129, 257.

ns. 43. Thomps. 72, 73.

Simile in Covenant. *Rob. Ent. 166. Vide*
de Tit. Covenant.

Simile

General Bar by Release.

Simile in Dower. *Rob. Ent.* 258, 263, 271.

Simile in Error. *Read's Dec.* 309. *Bro. Red.* 372.

Law Error. 259.

Simile in Quare Impedit. 2 *Bro.* 268.

Simile in quod ei defore. 1 *Lut.* 738.

Simile in Trespass. *Winch. Ent.* 100.
2 *Bro.* 151. *Thomps.* 335. *Clift.* 630. Dupli-
citer ad utramq; trans. See the Fourth
Part Tit. Debt, and Tit. Trespass, &c.

A. versus B.

In Banco Regis.
Release and
Plaintiff non-
sued.

ET hoc parat est verificare Unde per
Judiciū si p̄dia' A. actionem suam
p̄dia' inde s̄lus cum here seu manum
nere debeat, &c. Et super hoc idem
pet qđ p̄dia' A. ad placitum ip̄ius B.
supius placitat replicet & jungat
erit cum eodem B. Super quo dies in
de dat est partibus p̄dia' coram
Reg apud Westm̄ usq; diem—
post—videt p̄dia' A. ad placitū ip̄ius
B. supius placitat—replicand, &c. A.
quem diem coram Domino Reg apud
Westm̄ ven p̄dia' B. per Attorē suū
p̄dia' Et p̄dia' A. licet ad eundem diem
solemnit̄ exat' non ven sed defalt
Ideo cons̄ est qđ p̄dia' A. nihil capiat
p̄ Billam suam sed qđ ip̄e & p̄leg
de p̄s scit Johes Doe & Ricus s̄
sint inde in mid, &c. Et p̄dia' B. ca
inde sine die, &c.

Vide Rast. Entries 173. Clerk. Man. 27.
Bro. Red. 99.

Gen

General Bar by Acquittance pleaded.

Et p̄dict' A. B. p̄——Attornd suum
ven, (Ec.) Et die quod p̄dict' G. Et
(actionem non) quia die qđ post con-
tionem scripti p̄dict' scit die, (Ec.)
anno, (Ec.) p̄dict' H. apud C. in Com
p quoddam scriptum suum quod idem
hic in Cur p̄fert cujus dat est eis-
m die Et anno p nomen H. Ec. (ut in
ripto) cogn se recepisse Et huisse die
fectionis ejusdem scripti de eodem
p nomen A. B. de, (Ec.) quadra-
nt solid p nomen quadragint solid in
rtem solutōis majoris summe de qui-
s quidem quadragint solid fatebatur
fore solut dictumq; A. Hered Et Exec
s inde omnino fore quiet p idem
iptum Et hoc parat est verificare
de pet judic si, Ec.

Et p̄dict' G. Et H. die qđ ipd per ali-
a (Ec.) p̄cludi non debent quia idem
die qđ p̄dict' scriptum Acquietancie
n est factum suum Et hoc pet qđ in-
tratur p p̄riam Et p̄dict' A. filit Et
ia' G. die qđ p̄dict' H. non cogn se
cepisse Et huisse de dicto A. p̄dict' qua-
agint solid nec aliquem denar inde p
iptum illud put p̄d A. superius alle-
bit Et hoc etiam pet qđ inquiratur
riam Et p̄dict' A. filit Jo, (Ec.)

Vide Bro. Meth. Nov. 185. & Bro. Red.
4, 186. Plac. Gen. 248.

*Repl. per l'un,
Acquietancia
non est factum,
& Issue sur ceo.*

*Repl. per l'aut',
Non cogn' se
recepisse, &
Issue sur ceo.*

As

As to Parcel, the Defendant pleads an Acquittance from the Plaintiff; and as to the residue, *Non informatus* and Judgment.

Plaintiff replies, That the Acquittance is for another Debt.

Repl.

Et p̄dict' N. dic' qđ ip̄e p̄ aliqua p̄
legat ab acōne sua p̄dict' quoad p̄
6l. unde p̄dict' N. p̄litabit Acquittan-
ciam, &c. hēnū p̄cludi non debet qđ
dic' qđ ip̄a recepit de p̄fat' N. p̄dict'
in p̄dict' script' Acquittanc' spec' in p̄-
tem solucōn' p̄dict' 10l. Unde ip̄e sup̄
cognovit seipm̄ fore satisfact' & non
partem solucōn' p̄dict' 10l. modo petit
p̄dict' N. sup̄ius allegabit Et hoc (&c.)
Unde p̄t' Judic' & p̄dict' 6l. unac-
dampn' sibi adjudicari.

Rejoinder
and Issue.

Et p̄dict' N. dic' qđ E. fec' p̄dict' Scrip-
Acquittanc' eidem N. in part' solucōn'
p̄dict' 10l. modo superius petit p̄t' ip̄e
sup̄ius allegabit Et de hoc, (&c.) Cui
Execucō quousq; (&c.)

Vide Rast. Ent. fol. 179, 180.

Bar by an Acquittance mentioning that the
Bill could not be found, and Averment that
it is the same Bill, and Repl' p̄ non est facta
Bro. Red. 201. See 4 Part, Bar al Bill. In
part' denar' lebat' le vie p̄lede nil debet
p̄ priam al resid' Special Acquittance. Wm
Ent. 306. al part' Bar per Acquittan-
Repl' fuit de parte al Debi Rej. qđ
fuit n̄ parte Debi petit, Plie. Gen.
In trans' Barr qđ in cons' qđ def. a-
quietabit quer' de sibus trans', Cui

quietabit Def. 2 Bro. 145: See 4 Part
Cl. Bar in Debt sur Obl.

General Bar by Concord pleaded.

A Cito non Quia ptestando non cogit Barr' per Con-
aliqua in Narracon p'dict' fore cord' in Case.
a p placito tamen idem R. dicit qd
assumpcionem & pmiss' p'dict' fieri
p'sit scilicet primo die Septembris an-
(Et.) apud C. in Com H. int eun-
C. & p'fat R. tam de assumpcione &
mission p'dict' qm de omnibus aliis
alge & offensis inter ipsum R. & p'fat
ante eundem primum diem Septem-
bris hit fact' mot' ppetrat sive pendentis
p mediationem amicon suon inter
amicabiliter interbeniend talis ha-
atur concordia videlicet qd idem R. in
nam satisfactionem & relaxacionem tam
mpcionis unde p'dict' C. supius se
queritur qm omnino aliaq transge
sens p ipsum R. ante tempus illud
C. fact' daret eidem C. unam Vac-
Et qd idem R. extunc versus p'fat
m de assumpcion & pmission p'dict'
m de omnibus aliis transge & of-
fens' esset quietus imppetuum Et idem
ic qd ipse adtunc & ibm dedit & de- Concord' per-
bit p'fat C. unam Vaccam idemq form.
Vaccam illam de eodem R. adtunc &
recepit juxta formam & effectum
ordie p'dict' Et hoc parat est verifi-
unde per judicium R. (Et.)

Pre

*Issue sur nul
ciel Concord.*

Precludi non Quia dic' qd non habetur aliqua talis concordia inter ipsum C. & p'fat R. modo & forma quibus idem R. supius in barram p'litando allegavit Et hoc pet' (Rc.) V. Thomps. 69.

Bar.
In Covenant.

*La Def. prote-
stand' dit que
il avoit plein
pouvoir a demi-
ser.*

*Pro placito il
plede un con-
cord en dis-
charge del Co-
venant.*

Et modo ad hunc diem scite dicitur Veneris pr' post Crastin' Trin' isto eodem Termino Alq' quoniam diem p'dict' J. habuit licent' ad Villam p'dict' interloquend' Et tunc ad respondend', Rc. coram Dño Rege apud Westm' tunc p'dict' C. p' Attoz' suum p'dict' qm' p'dict' J. p' C. B. Attoz' suum idem J. defend' vim & injur' quando. Et dic' qd p'dict' C. actione suam p'dict' inde versus eum habere seu manutenere non debet Quia p'testando qd ipse idem J. p'dict' tempore consecrationis Indenture illius habuit plenam potestatem & legitimam auctoritatem dimittere & concedere p'dictam domum Manerii & omnia & singula p'missa cum p'tin' supius recitat' fore p'dimissa scdm' formam & effectum Indenture p'dict' p' placito tamen idem J. dicit qd post consecrationem Indentur' p'dict' scit' decimo die Junii Anno, (Rc.) apud R. in Com' C. p'dict' talis concordia inter p'dict' C. & J. habebatur scit' qd idem J. solveret p'fat C. in plenam satisfactionem & exonerationem conventionis p'dict' & omnium & singulorum conventioz' & agreementoz' in Indentura p'dict' spec' quindecim libras Idem

I. adtunc & ibi supinde solvit p̄fat C.
 dia' quindecim libras Ac p̄dia' C. cas-
 em quindecim libras de p̄fat J. adtunc
 ibi in plenam satisfactionem & ero-
 rationem conventionis illius & om-
 nium & singulorum conventionum & agree-
 mentorum indentur p̄dia' specificat ac-
 ceptabit & recepit sedm formam conco-
 rdie p̄dia' Et hoc parat est verificare Un-
 de petit iudicium si p̄dia' C. actionem
 suam p̄dia' inde versus eum here seu
 anutenerere, &c.

C p̄dia' C. die qđ ip̄s p̄ aliqua p̄ p̄d'
 J. superius p̄litando allegat ab
 actione sua p̄dia' versus ipsum J. hendi
 cludi non debet quia die qđ non habe-
 re aliqua talis concordia int̄ ipsum C.
 p̄fat J. qualis in barra supius alle-
 gatur Et hoc petit quod inquiretur v-
 tiam Et p̄dia' C. silit, &c. Ad vend-
 de Iur, (&c.)

Repl.
 2a' null' tal'
 Concord' &
 Issue sur ceo.

E & p̄dia' W. p̄ — Actoꝝ suum In Debt.
 vend & defendi vim & injur quan-
 &c. Et dicit quod p̄dia' N. actione
 suam p̄dia' inde vltus cum habere seu
 anutenerere non debet Quia die qđ post
 tempus quo supponit ip̄m W. p̄d' equam
 p̄fat N. in forma p̄dia' emisse scise
 al die & anno) apud D. in Com D.
 ter p̄fat W. & dia' N. tam de debito
 qđ de omnibus aliis debitis transgre-
 ssionibus queret debet & demandi
 ter ipsos W. & N. ante tempus illud
 bit mot h̄it sive p̄petrat p̄ mediaconem
 O ami-

amicorū suorū int̄ eos amicabiliter inter-
venien̄ talis habebatur concordia videt̄
quod idem **M.** p̄ omnibus debet transgr̄
contractibūis querel̄ & debat̄ per ipsum
M. p̄fat̄ **N.** aliquo modo debet hie mo-
sive ppetrat̄ solveret p̄fat̄ **N.** triginta so-
lidū Et qđ uterq; eorū versūs alterum d̄
omnimodū debitis transgr̄ contraq; que-
rel̄ & debat̄ inter eos ante tempus illud
debet hie sive mot̄ quiet̄ esset imppetum
quos quidem triginta solidū idem **M.** p̄-
fat̄ **N.** adtunc & ibm solvit scđm formam
concordie p̄dicta Et hoc parat̄ est veris-
care unde p̄t̄ iudiciū sū p̄dicta **N.** ac-
tionem, (Ec.)

Repl̄, Qđ nul̄ tiel concordia (ut supra.)

Bar.
Plit̄ Concordia
ad transgr̄.

Ad vi & armis non cul̄ Ad res-
(acco) non quia die qđ post p̄dictum
tempus quo supponitur (Ec.) scit̄ ta-
die anno & loco (Ec.) inter eundem **C.**
p̄fat̄ **D.** tm̄ de transgr̄ p̄dicta qm̄ de om-
nibus aliis t̄nsgr̄ debet debat̄ & deman-
int̄ eos ante eundem diem (Ec.) hie mo-
sive penden̄ per mediacoñ amicomū suorū
inter eos amicabiliter intervenien̄ t̄
habebatur concordia videt̄ qđ idem **C.**
plenam satisfactionem tam t̄nsgr̄ illū
qm̄ oñm al̄ t̄nsgr̄ debet debat̄ & deman-
daret & solveret p̄fat̄ **D.** quinquaginta
& quinq; solidū quos quidem 55 s. idem
C. p̄fat̄ **D.** p̄ satisfactione t̄nsgr̄ illū
adtunc & ibm dedit & solvit juxta for-
mam & effectum concordie p̄dicta ac idem
D. quinquaginta quinq; solidos illū

ipso C. p satisfactione tñsgr illius
tunc & ibm recepit Et hoc parat est
ificare Unde petit iudicium, (Ec.)
Repl' Dult talis concordia (ut sup̃a.)
Thompf. 305.

Et quoad venire vi & armis necnon
capcōd & asportacōd bonoꝝ &
alloꝝ p̃dia' (nōn cul) Et quoad in-
berberacōd vulneracōd & maletra-
cōd ipsius Quer (Acō non) Quia
qđ idem Def. ac quidam A. B. p̃e-
tempore quo, Ec. in ipm Quer in-
fecer ac ipm verberaver vulnera-
& maletractaver p quibus quidem
& insulte postea scit 10 die Maii
no Añi Dñi Regis nunc 7 apud S.
Com̃ p̃dia' int̃ p̃dia' Quer & p̃fat
B. & ipm Def. p mediacōd amicoꝝ
& int̃ eos amicabilē intervenied
hebatē concordia, viz. quod p̃dia'
B. solveret p̃fat Quer 40s. in ple-
eroneracōd & satisfactiōd insulte
bacōd vulneracōd & maletractacōd
& p ipm Def. super ipm Quer in
na p̃dia' fac' super quo p̃dia' A. ad-
& ibm solvit p̃fat Quer p̃dia' 40s.
lenam satisfactiōd insulte verbacon
eracōd & maletractac' p̃dia' quos
m̃ 40s. idem Quer de eod Def. per
p̃dia' A. apud S. p̃dia' adtunc &
acceptabit & habuit Et hoc, (Ec.)
& Ec.

Def. pleads,
That the Tres-
pass was done
by him and
another, and
the other
made Satisfac-
tion for him.

Repl.

That the o-
ther only
made Satis-
faction for
himself.

p̃dia' quer quoad p̃dia' p̃litum p̃d
ad verbacon vulneracōd & male-
racōd p̃dia' superius in barram
p̃litat

plitat (peludi non) Quia die qđ h
 & verum est qđ pđia' A. B. & pđia' de
 in ipm quer' insult fecer & ipm verba
 ver vulneraver & malettractaver p
 pđia' def. superius allegabit Sed idem
 quer' prestando qđ nulla tñs habebat
 concordia int ipm quer' & pñat A. B.
 def. qualis pđia' def. superius allegabit
 p plito die qđ pđia' 10 die Maii anno
 supradicto apud S. pđia' tñs habebat
 concordia int ipm quer' & pñat A. B.
 mediacon amicon suon int eos amica
 bilit' intervenien qđ idem A. solven
 eidem quer' 40 s. in plenam satisfacti
 nem pđia' insult verberacon vulneracon
 & malettractacon p ipm A. tantum
 per eund quer' in forma pđia' fact' Et
 idem quer' postea scit eodem 10 die Maii
 apud S. pđia' predictos 40 s. de eode
 A. in plenam exoneracon & satisfacti
 pđia' insult verbacon vulneracon & ma
 letractacon per eund A. tantum sup
 ipm quer' in forma pđia' fact' recepit
 acceptabit put pđ def. superius allegabit
 Absq hoc qđ idem quer' recepit
 pñat A. eosdem 40 s. in plenam satisfacti
 on pđ insult verbacon vulneracon
 malettractacon per pñat def. superius
 ipm quer' in forma pđ fact' put pđ
 superius allegabit Et hoc parat est
 rificare Unde ex quo pđ def. tñsge &
 sult pđ superius cogn perit iudicium
 dampna sua occon tñsge & insult illi
 adjudicari, &c.

Traverserh
 the Satisfac
 tion alleged
 for the
 Defendant.

Rejoinder.

Et pđ def. ut prius die qđ pđ quer'
 recepit de pñat A. pđ 40 s. in plenam

Concord & Satisfaction p̄ insult ver-
 acō vulneracō & maletractacō per
 m̄ def. super p̄ quer in forma p̄dicta
 put ipse def. superius allegavit Et
 hoc pōd se super p̄iam Et p̄ quer
 Ideo quoad triandū tūm erit ist' qm̄
 al' erit superius junct' Precept' est Dic
 Venire fac, (Ec.)

Bar de solucō denar in plen' satisfac-
 tō trans, (Ec.) Vide Clerk's Assist. 96.
 Comp. 305, 322, 387, 398. Winch. 961,
 2, &c. Bro. Red. 490. All trans & insult,
 R. Gen. 623. In Case sur Ass. Clift. 198.
 Comp. 69. 1 Bro. 26. Trans. 46, 108.

In Pleading of an Accord it is to be obser-
 ved, That the Thing given and received, ought
 to be valuable and satisfactory; a Charge to
 the Giver, and a Benefit to the Receiver.
 Dyer 356. Fitz. Accord. 3, 4.

And yet if the Defendant give the Plaintiff
 a Pottle of Wine in Satisfaction, and he agree
 to it, this is a good Accord and Bar in the
 Action. Fitz. Accord. 1. Fitz. Bar. 26.

It must be perfectly and compleatly finish-
 ed and executed, and Satisfaction made ac-
 cording to the Agreement before any Action
 brought; and tender of Money without Pay-
 ment is no good Plea in Bar of Trespass.
 Ed. 4. 2. Old N. B. fol. 122.

It must be in the Life-time of him that did
 the Wrong; for if it be executed by the Heir
 or Executor of the Trespasser, this will be no
 Bar where the Action may lie against the Exe-
 cutor. Dyer 356.

General Bar by Concord.

The Party to whom the Wrong is done must accept the Amends according to the Agreement; for it seems, notwithstanding the Accord, he may refuse it; and Tender without Acceptance will be no Bar. 9 Co. 79. *Dyer* 356. 5 *Ed.* 4. 7.

And if divers do a Trespass, and one make a good Accord, this will discharge, and be a Bar for all the rest; so if a Stranger or Friend give the Amends in Recompence, this it seems is as good as if the Party himself did give. 9 Co. 79.

So if divers do a Trespass, and the Party release it by general or special Words to one of them, this is a Discharge of all, and every one of them may plead it in Bar if he can get and shew it, for they are but as one Trespasser. *Hob. Rep. pl.* 96.

Accord with Satisfaction is a good Bar in a Writ of Covenant, because the Duty accrues not meerly by the Deed, but by a Thing subsequent together with the Deed.

And it is a good Bar in an Attaint, because this is not founded upon the Record only, but upon the false Oath also.

And in all Cases where an Arbitrament is a good Plea, an Accord with Satisfaction is also, and so generally in all Actions where Damages only are to be recovered. 6 Co. 44. a. *Blake* Case.

But when a certain Duty accrues by the Covenant at the Time of doing it, Accord with Satisfaction is no Plea. *Idem.*

So where no certain Duty accrues until the subsequent Act or Wrong, there Accord with Satisfaction is a good Plea. *Idem. ibid.*

In a Writ of Covenant, where the Breach is for not repairing the House, Accord between the Plaintiff and Defendant, and Execution of it in Satisfaction and Discharge of the Debt of the said Repairs, is a good Plea. 6 Co. 44. Cro. 100.

It was resolved *per totam Curiam*, That Accord in all Actions (wherein the Wrong is supposed to be done *vi & armis*, where *Causas* and the *Exigent* lieth at the Common Law) is a good Plea, as in Trespass and Ejectment, *Detinue* of Charters, Horse or other goods; for where the Certainty is to be recovered, an Accord is a good Plea. *Vide* 6 Co. 78.

In Actions where Damages only are to be recovered, Arbitrament or Accord, &c. is a good Plea, though the Action be grounded on deed or Record, but the Satisfaction ought not to be of any Thing whereof the Plaintiff had property. 6 Co. 44. *Dyer* 75, 356. 3 Cro. 356. *Id.* 124.

Accord and Satisfaction is a good Plea in personal Actions, but not in Real. 9 Co. 78, 80. 4 Co. 1. 13 H. 7. 20.

In all these Cases, Accord with Satisfaction is a good Plea.

1. In all Cases *vi & armis*.
2. Where *Cap.* and *Exigent* lies by the Common Law.
3. In Ejectment, because it is but in the nature of a Trespass.
4. In Appeal of *Murder*.
5. In Ravishment of *Ward*.
6. In *Detinue* concerning personal Things.

General Bar by Concord.

7. In Detinue concerning Charters of Freehold.

8. In Quare Ejecit infra terminum.

9. In an Action of Waste, in le tenure but not in le tenet. 6. Co. 44. 2 Inst. 307.

10. In an Action of Debt upon a Lease for Years.

11. In a Promise to build a House.

12. In an Action of Covenant, &c. 9 Co. 78, 79. 35 H. 6. 30.

If Part of the Agreement is not performed, the Plea is ill. 1 Cro. 193.

And the safest Way of pleading an Accord, is to plead it by Way of Satisfaction, and not of Accord only: And you need say no more than that the Defendant had paid the Plaintiff 5 s. in full Satisfaction of the same Action, which 5 s. the Plaintiff received, &c. Et Judgment sit Accon. 9 Co. 80. 19 H. 6. 29. Vide Brownl. Lat. 120. Winch. Ent. 170.

General Bar by Acceptance pleaded.

Acceptance
of a Surren-
der pleaded.

Action non Quia dic qd ipse idem A. p. post concessio dimissio p. eidem A. p. p. dia' C. in forma p. dia' facti & ante concessionem reversionis p. dia' eidem A. & T. scilicet 8 die Martii Anno Regni Dni Regis nunc 15. idem A. apud L. p. dia' in Paroch & Warda p. sursum reddidit eidem C. terminum annoz ipsius A. de & in testis p. dia' cum p. tia sibi in forma p. dia' dimiss. ad tunc ventur & in expirat ac totum statum p. tatum & interesse suum de & in eidem quam

am quidem sursum redditionem idem
ad tunc & ibi acceptabit Et hoc, (Ec.)
inde, (Ec.)

Precludi non Quia die qd pdict' A.
sursum reddidit eidem C. pō termi-
am annorū ipsius A. de & in tētis pō
m ptiū sibi in forma pdict' dimiss. seu
ad ius titlū sive interesse suū de &
eisdem modo & forma pout pdict' A.
perius inde plitando allegabit Et
e per quod inquirat p patriam Et
ia' A. inde sili, (Ec.) Vide i Saund.

Repl.

Action non Quia die qd post di-
mimon pdict' parcel sive porcion
timar garbarum frumenti & grano
ia' per pstat Decan & Capitul eidem
G. ut pfertur fact' & diu antequam
ia' reddit 280l. p quatuor ulē annis
ia' quin. annorum in Mare pō spec
ut aliqua pars ejusdem debent debet
it (tal die & anno) apud L. pdict' in
aroch & Warda pdict' idem C. G. per
andam Indentur suam Sigillo suo
illat & geren dat eisdem die & anno
cessit & assignabit totū interesse & ter-
and annorū sua que ipē tunc huit
atur de & in pdict' parcel sive porcion
timarū pdict' cum ptiū cuidam J. V.
virtute cujus quidem concession
m J. V. in pdict' parcel sive porcion
timarū pdict' cum ptiū intravit & fuit
de possessionat Et ulterius idem C. G.
qd pdict' Decan & Capitul postea
it (tli die & anno) apud L. pdict' in
Paroch

Assignment
of Term and
Acceptance
of Rent from
the Assignee
pleaded.

Paroch & Warda p̄d̄a' fuerunt
 ciam de concessione & assignacōe p̄d̄
 scientes concessiōem & assignacōem p̄d̄
 stea scilt eisdem die & anno ult̄ sup̄
 dia' apud L. p̄d̄ in Paroch & Warda
 p̄d̄ receper & acceptaber de p̄fat J.
 p̄d̄ redditum sic ut p̄fertur p̄ decimis
 sup̄ius reserbat (viz. sex * denar de re
 dit p̄d̄) ac ipm J. D. tenentem eorū
 de decimis p̄d̄ ad tunc & ibidem ac
 ceptaber Et hoc, (Ec.) Unde, (Ec.)

* *Vide postea.*

Plaintiff's Demurrer.

IT was objected in this Case, That the
 ney reserved for the Tythes was no Re
 incident to the Estate of the Demise, but
 ly lay in Privity of Contract between the L
 for and Lessee; and the Acceptance of
 Rent from the Assignee hindred not,
 that the Plaintiff might at all Times resort
 the Defendant, being the Lessee, for the Re
 upon the Privity of the Contract, notwith
 standing such Acceptance. But the Court
 seemed to incline, That it was a Rent th
 went with the Reversion, and that the Ass
 nee was liable to pay it.—— Yet gave
 Judgment for the Plaintiff for the Fault in
 Plea, viz. sex * denarios de reddit p̄d̄
 tho' the Defendant's Counsel urged, That
 were superfluous, and inserted by Mistake
 the Clerk; but the Court said, That
 Plea thereby was altogether insensible. See
 2 Saund, 298, &c. Winch. Ent. 153.

* *Vide antea.*

ff. Qui

Q. Quod Def. Dedit scripte Obl in
faciend pmiss. Clift. 199. 1 Bro. 262.

Bene & verum est qd assumpsit, sed
bit post ult Cont Et quer acceptabit.
m, 203.

Def. pro secura solutione dedit Obl
non dedit. Hans. 104. Cl. Ass. 117.

Acceptance de autre Benefice pstat.
sch. Ent. 626.

Acceptance de Annuity in Dowry pli-
Pl. Gen. 283, &c.

Issue in Tail accept Rent reserve per
nant in Tail. 2 Bro. 166.

By Acceptance of other Things pleaded.

It is said, That when the Condition is for
Payment of Money, yet by Accord and
Agreement any other Thing may be given in
Satisfaction of the Money, so that if the Feof-
or Obligee accept a Horse, &c. in Satis-
faction, this is good; but if the Condition
be for the Delivery of a Horse, &c. altho'
Obligee or Feoffee accept Money, &c. for
Horse, it is no Performance of the Condi-

The like Law is, If the Condition be to ac-
knowledge a Recognizance of 20 l. if the
Obligee or Feoffee accept 20 l. in Satisfaction
of the Condition, it is not sufficient in Law;
so it is of all other collateral Conditions.
78. 12 H. 4. 23. 3 H. 7. 4. b. 11 H. 7.
21. 19 E. 4. 1. b. 22 E. 4. 24.

More, It is said, That if a Debt be due on
Obligation, and I take a Statute for this
Debt

Paroch & Warda p̄dīc' huerunt
 ciam de concessione & assignacōne p̄dī
 scientes concessiōem & assignacōem p̄dī
 stea scilt eisdem die & anno ult' sup̄
 dīc' apud L. p̄dī in Paroch & Warda
 p̄dī receper & acceptaver de p̄lat J.
 p̄dī redditum sic ut p̄fertur p̄ decimis
 sup̄ius reserbat (viz. sex * denar de re
 dit p̄dī) ac ipm J. D. tenentem eorū
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 nee was liable to pay it.—— Yet g
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 the Clerk; but the Court said, That
 Plea thereby was altogether insensible. S
 2 Saund, 298, &c. Winch. Ent. 153.

* *Vide antea.*

¶ Quod Def. Dedit scripte Obl in
contra pmissi. Clif. 199. 1 Bro. 262.
Bene & verum est qd assumpsit, sed
bit post ult Cont Et quer acceptabit.
m, 203.

Def. pro secura solutione dedit Obl
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 faction, this is good; but if the Condition
 be for the Delivery of a Horse, &c. altho'
 the Obligee or Feoffee accept Money, &c. for
 a Horse, it is no Performance of the Condi-

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 knowledge a Recognizance of 20 l. if the
 Obligee or Feoffee accept 20 l. in Satisfaction
 of the Condition, it is not sufficient in Law;
 so it is of all other collateral Conditions.
 78. 12 H. 4. 23. 3 H. 7. 4. b. 11 H. 7.
 21. 19 E. 4. 1. b. 22 E. 4. 24.

Note, It is said, That if a Debt be due on
 an Obligation, and I take a Statute for this
 Debt

Debt from the Obligor, this doth not determine the Debt due by the Obligation, but I may sue upon either of them at my Election and the Statute is no good Bar to the Obligation. See 6 Co. 45, 49. *Bro. Debt.* 27.

Again it's said, That when the Money is to be paid to a Stranger, there if the Stranger accept of an Horse, or any collateral Thing in Satisfaction of the Money, it is no Performance of the Condition, because the Condition is to be strictly performed in that Case. But if the Condition be, That a Stranger shall pay for the Oblige, &c. a Sum of Money, there the Oblige (being Party, &c.) may receive the Horse, &c. in Satisfaction. 5 Co. 17. 4 H. 7. *Dyer* 35 H. 8. 56. 27 H. 8. 1.

Also it's said, That if the Obligor, Feoffee or Lessor pay a less Sum, either before the Day, or at another Place than is limited by the Condition, and the Oblige, Feoffee or Lessee receiveth it, this is a good Satisfaction. *Co. Litt.* 212. b.

Defendant pleads, That a Stranger sealed and delivered a Bill to the Plaintiff in Discharge of the Bond, and that the Plaintiff accepted the Bill in Discharge of the Bond.

¶ **E**t p̄dict' C. D. quando, (Ec.) Et p̄t auditū Scripti p̄t Et ei legitur, Ec. p̄t eciam auditum Condition ejusdem Scripti Et ei legitur hec verba (the Condition of, &c.) Quibus l̄tis & auditis idem C. die q̄d p̄dict' (Action non) quia die q̄d post consecrationem Scripti Oblig p̄t & ante p̄t 15 diebus Martii in Condition p̄t superius scriptum

est primo die Martii Anno Regni dicti
Regis nunc 7 apud L. p̄d̄ in Pa-
sch & Marti p̄d̄ quidam C. f. de, &c.
mediatō p̄d̄ C. D. quandam Bil-
ligam Obligatō p̄ solutōe decem lib̄
Anglis monete Angl ad certum diem
tunc futur scribi fecit & sigillavit & illi
factum suū p̄fat A. B. ad tunc & ibi
delibavit quam quidam Bill Obligatō
decem lib̄ idem A. B. tunc & ibi in
plenam & integram solutōem & exōna-
tō dicit 10 l. in Conditiō p̄d̄ Scrip-
t Obligatō spec̄ acceptavit recepit &
uit Et hoc, &c. unde, &c.

(Precludi non) quia dicit qd̄ p̄d̄ C. f.
in hac p̄d̄ narrat non deliberavit
idem A. B. Bill Obligatō p̄d̄ in
ar ipsius C. superius mentōnat p̄out
dicit C. superius p̄fitando allegabit
et hoc per qd̄ inquiratur per priam Et
dicit C. sicut Ideo Jur̄, &c. Vide Bro.
ed. 236.

Repl.
Qd' non deli-
beravit B. l'
Obligat'.
And Issue.

Debt upon Two several Bonds of several Sums.

Defendant prays Oyer of the Bonds, and as
the First, pleads Payment at the Day, as to
the other, pleads he delivered the Plaintiff
in Satisfaction.

Et quoad p̄d̄ 12 l. de p̄d̄ 20 l.
resid̄ quas p̄d̄ A. exigit versus
virtute p̄d̄ secundi scripti idem A.
qd̄ ipse post confectōe ejusdem scrip-
& ante p̄d̄ festum Pur beate M̄a in
conditiō ejusdem scripti spec̄ scilicet
20 die

20 die Dec Anno Rñi dia' Dñi Regi
nunc 7 apud L. in Comd pñia' delibera-
vit pñia' A. sex quarter tritici quatuor
quarter hordei quinque quarter alig-
nis, (Ec.) in satisfactō 6 l. pñia' A.
in pñia' fest' Pur hte MA solvendū qu-
quidm sex quarter tritici, (Ec.) pñia' A.
satisfactō pñia' 6 l. de eodem J. adtunc
ibm recepit Et hoc, (Ec.) Unde, (Ec.)

Vide 1 Brownl. 76, 111. 3 Brownl. 12
Brownl. Red. 119, 196, 236, 237. Winch. Ex.
186, 187.

Repl.

Plaintiff as to the first Plea replies, That
he did not pay at the Day. Et quoad pñia'
12 l. de pñia' 20 l. residū quas ipse erigit
versus pñia' J. virtute pñia' secundū
scripti protestando (that the Defendant did
not deliver the Wheat, Barly, &c.) pñia' plac-
to idem A. dic' qd ipse non recepit ne-
acceptabit pñia' sex quarter tritici qua-
tuor quarter hordei, (Ec.) de pñia' A.
in plen satisfactō pñia' 6 l. in pñia'
fest' Pur hte MA solvendū put pñia' A.
superius allegavit Et hoc filie per
inquiratur p patriam Et pñia' J. A.
Ideo quoad triand tmd exit ist', (Ec.)
pcept est Dic, Ec. Def. delibabit qu-
Sex vaccas in satisfactō Debi qua-
acceptabit. Bro. Red. 169. Quod De-
Et al Deliberaver al obl qd quer accep-
tabit. Rob. Ent. 188, 192. Repl qd no-
Et Exit inde. Idem 234. Quod quer ac-
ceptabit locale in satisfactō De-
Repl quod recepit p pigdoze Et traver-

deadvocat disclamat here aliquod tu-
lum seu interesse in Clo superius men-
nat qdque Aberia pdia' pdico tempo-
quo, &c. contra voluntat ipsius A.
clm pdia' intraver & blada & herba-
tunc & ibm crescen depast' fuer concu-
caber & consumpser Et idem A. ult-
rius die qd ipse post pdia' 20 diem Ja-
nui Ann 7 supradicto & ante diem exhi-
biton Bille pdia' scilicet 10 die April A-
no Regni die Dñi Regis nunc 7 sup-
dicto apud R. pdia' obtulit pstat
Quinque solidos legis monete An-
eristen sufficien amend p transgr pdi-
pro Aberiis pdia' in clo pdia' in plen-
satisfaction transgr ill quos quida-
5 solidi pd' C. de eodem A. recipere a-
tunc & ibm recusavit Et hoc, (&c.) U-
de, &c.

Repl.
Qd' non obtu-
lit, &c.

(Precludi non) quia protestando qu-
pred A. de injur sua ppd ac voluntate
pdico 20 die Januarii in Parr pdi-
superius spec clm ipsius C. pdia' ap-
R. pdia' in com pdia' fregit & intrav-
ac blada & herbam ipsius C. pdia' ib-
tunc crescen tñ Aberiis pdia' depa-
fuit conculcavit & consumpsit put id-
C. superius versus eñ inde querit p-
stando etiam qd pdia' 5 solidi non su-
sufficien amend pro transgr pdia' in
pdia' cum Aberiis pd fact' p plito id-
C. die qd pñ A. ante diem exhibiton
Bille pñ non obtulit ad solvend eide-
C. pñ 5 solidi in plenam satisfacton tri-
pdia' put pdia' A. supius placitant
allegavit Et hoc, (&c.) Unde, &c.

Et p̄d̄ A. ut p̄ius die qđ ipse idem A. ante diem exhibicōd̄ Bille p̄dia' obtulit solvend̄ eidem C. p̄dia' quinque solid̄ plen̄ satisfaccōd̄ transgr̄ p̄dia' p̄out se superius placitando allegavit Et hoc pōd̄ se super p̄riand̄ Et p̄dia' C. it, &c. Ideo v̄nd̄ inde Jur, &c. Vide 10. Vad. 513. Thompsl. 304. Sim̄ Plie p̄t qđ Emend̄ oblat fuer̄ p̄ al trans̄, &c. Winch. Ent. 995. Sil Plie & Repl qđ on obtulit sufficiend̄ Emend̄. 1 Bro. 333. Thomp. 360, 409. Vide 4 Inst. Cl. Bar. in trans̄.

Rej.
2^d obtulit,
and Issue.

General Bar by Arbitrement pleaded.

Actio non, Quia die qđ post tempus conspiracōis p̄dia' fieri suppoit licet (tali die & anno) apud B. in com̄ S. tam p̄dia' G. qm̄ idem C. me- acōne amicoꝝ suoꝝ posuerunt se in arbitrium Ordinacōnem & Iudic L. M. P. Arbitratoꝝ inter ipsum C. & p̄fat̄ indifferenter electoꝝ tam de & super procuracōne p̄dia' quam de omnibus aliis procuracōnibus conspirationibus transgr̄ & Offensis inter ipsos M. & G. ante (tlem diem, &c.) factis Qui quidm̄ arbitratōres postea codm̄ (tali die) apud B. p̄dia' Arbitrat̄ fuerunt in foꝝ- a sequen̄ videlt̄ p̄ eo qđ transgr̄ & of- ns p̄d̄ p̄ p̄d̄ C. eidem G. fact' ac tr̄sgr̄ offens̄ p̄ ipsum G. eidem C. fact' ante (tlem diem, &c.) fuerunt equales in dampno qđ tam p̄dia' G. versus p̄efat̄ de omnibus tr̄sgr̄ & offensis p̄ ipsum G.

Bar.
Per Arbitre-
ment' in Con-
spiracy.

G. prefat C. ante dictum (tlem diem
 &c.) fac' qd' p'dict' C. versus prefat C.
 de oibus tñlgr' & offensis p' ipsum C.
 prefat G. ante dñm (tlem diem, &c.)
 facis esset quietus & exoneratus impe-
 petuum & qd' omnes accōnes inde in a-
 ierū inter eos exting' essent & determi-
 nat Et hoc. (Et.) Unde per iudicium, (Et.)

Repl.

Et Issue sur ceo.

Et p'dict' G. dic' qd' ipse p' aliqua (Et.)
 deludi non debet quia dic' qd' p'dict' A-
 bitratores non fecerunt aliquod tale a-
 bitrium Ordinationem sive Iudicium
 inter ipsum & prefat C. put p'dict' C.
 suus allegavit Et hoc per qd' inqu-
 ratur p' patriam, (Et.) Ad, (Et.)

Note, It is said an Award is no Plea in A-
 taint, or other Matter of Record; but if
 Matter of Record be mix'd with a Matter
 fait, then it is a good Plea, 13 Ed. 4. 5.

Yet by 11 H. 7. 13. In Waste it is held
 Plea, because the Action is mix'd, nor in
 other Real Action; but in forger of Fairs
 other Actions upon Statutes, it is said to be
 good Plea.

And tho' an Accord is not a good P
 without a Satisfaction executed in the Who
 yet Arbitrement without Execution is,
 cause an Action lieth thereon. 5 Edw. 4.
 6 H. 7. 10.

Bar.

By Arbitra-
 ment in Debt.

A Ccōn non, Quia dic' qd' tam ipse
 W. qm p'dict' H. post p'dict' dñm
 diem Maii scitit primo die Julii An-
 (Et.) apud L. in Comd S. posuerunt
 in arbitriū ordinationem & iudiciū
 quorūdam J. R. & M. Arbitratorū ta-

parte p̄dicta' W. qm̄ p̄fat' H. indiffe-
ne electorū tam de debito p̄dicta' qm̄ de
omnibus transgr̄ (Ec.) inter ipsos (Ec.)
te p̄dicta' p̄ximū diem Julii moꝝ (Ec.)
i quidem arbitratores accepto super
onere arbitrandi in p̄missis eo qđ ipsi
tractatu inē p̄dicta' W. & p̄fat' H. tunc
p̄ examinaconē eorūdm̄ inde habie-
bener qđ transgr̄ p̄dicta' & p̄fat' H. eidem
ante tempus illud fac' in multum
cesserunt transgr̄ p̄ ipm̄ W. p̄fat' H.
cas arbitrati fuerunt ordinaverunt
adjudicaber de p̄missis qđ idem W.
beret p̄fat' H. sexaginta solidis & de
bito illo & de omnibus transgr̄ p̄ ip-
m̄ W. p̄fat' H. ante tempus illud il-
erga ipsum H. esset quietus imppe-
& sic qđ p̄dicta' H. de omnibus
nsgr̄ p̄ ipsum H. eidem W. factis es-
quietus imppetuum & die qđ ipse
agint solidos illos p̄fat' H. adtunc &
m solbit, Et hoc (Ec.) Unde petit
icid, (Ec.)

Etion non, Quia die qđ post p̄dictum
tempus trans p̄dicta' sup̄ius sup-
scile (tli die & anno) apud St. p̄dicta'
m A. & p̄dicta' B. ex eorū unanimo
sensu & assensu posuer se in Arbi-
quorūdam C. D. & E. f. ad ordi-
& arbitrando de & concernē oībus
bus materiis & controversiis quibus-
que tunc fuer' int' eos penden,
i quidem Arbitrator accept' sut' se
re arbitrii ordinaconis & iudicii de
sup̄ p̄missis p̄dicta' eis ut p̄ferre

Bar.
Per Arbi-
trament' in
transgres'.

submissis postea scilicet predicta (Eli die & anno) apud it. predicta ordinaverunt arbitri verunt & adjudicaverunt inter ipsos A. prefat B. de & super premissis eis ut prefertur submissis, That the Defendant should do the Plaintiff 5l. and should do such and such Things, tam in plenam satisfactionem contentationem cujusdam actionis de inter partes predicta tunc pendent quod omnia aliaque litium materialia & controversia quarumcumque inter ipsos prefat B. & ante submissionem predicta pendent, Et idem A. in facto dicit, That he tender'd B. Money (such a Day, Year, and Place,) and he refused to take it. Et ulterius idem A. dicit, That he performed the rest of the Award, and shews how, and when, secundum formam & effectum Ordinis Arbitrii Judicii predicta, Et hoc (Ec.) Unde (Ec.)

Repl'.

Precludi non Quia die quod bene & recte est quod post predicta tempus, Ec. and confesses the Submission to the Arbitrators as in the Plea, put predicta A. super prelitando allegavit, Sed idem B. ulterius dicit quod postea & antequam Arbitratores predicta aliquam ordinationem arbitrium vel adjudicationem inter ipsos & prefat A. de & super premissis eis prefertur scilicet submissis fecerit scilicet (die & anno) ipse idem B. exonerat Arbitratores predicta de & ab omni ordinatione sive adjudicatione inter ipsos B. prefat A. in & super premissis predicta eis ut prefertur submissis fecerit, Et hoc recte est verificare, Unde per judicium damp

impna sua occone transgr pzedia' sibi
judicari.

Defendant rejoins, Qd quer non exone-
bit Arbitratores p'dia' de & ab, (Ec.)
Issue joined thereon.

Et p'dia' D. &, (Ec.) Attorū suum
ven, (Ec.) & quoad venire vi & ar-
s (non cul) & quoad resid transgr
ia' supius fieri suppōit idem D. dicit
p'dia' R. acconem suam p'dia' inde
eum habere non debet quia die
post tempus quo supponitur transgr
ia' fieri scit (tal die & anno) idem D.
p'dia' R. apud D. poluerunt se in ar-
trid ordinacon & iudicio C. & S.
de transgr p'dia' qm de & sup om-
bus aliis tnsgr sect' quere' debet de-
& demandi inter eundm D. & p'efat
ante tunc hic mor sive ppetrat pze-
trioz Arbitratores (accepto super se
ere arbitrandi in pmiss) tunc ibidem
bitrat fuer ordinaber & adjudicaber
forma sequen videlt qd p'dia' D. da-
p'fat R. viginti solidi in plenam sa-
stacionem tnsgr supralpec qm om-
um alioz tnsgr sectaz quere' de boz
bae & demandi quos quidem viginti
solidos idem D. p'fat R. tunc ibm de-
t juxta formam & effectum arbitrii or-
naconis & iudicii p'dia', Et hoc parat
verificare unde petit iudicium si pze-
a' R. acconem suam p'dia' inde ver-
eum here debeat, (Ec.) — Repl'.

Precludi non debet, Quia die qd Ar-
tratores non fecerunt aliquod tale

Bar.
Aliter in
transgr'.

arbitrium ordinacionem sive iudicium
 & super tñsge p̄dicta' put p̄dicta' D. futim
 allegabit, Et hoc p̄f, &c.

More of this may follow in Debt in Part
 Et vide Thomps. 376. 2 Saund. 292. Bro.
 Red. 116. Bro. Vad. 452. Hans. 45. Per Ar
 bitrement puis le darrein Continuance
 Pl. Gen. 279. 313.

General Bar by former Judgments
 pleaded.

In Appeal. See Coke's Entries, fol. 54.

Def' pleads
 another Judg-
 ment for the
 same Debt re-
 covered in
 King's Bench.

Action non (&c.) Quia die q̄d po
 confectō Bill p̄dicta' scit Term
 Sed Bill Anno, &c. 7. p̄dicta' A. veni
 Cur Dñi Regis coram ipso Rege apud
 Westm & ptulit in Cur dcd Dñi Regis
 [&c. And so recite the whole Record and
 Judgment] prout p̄ Record & Proce
 inde in eadem Cur dicti Dñi Regis co
 ram ipso Rege apud Westm p̄dicta' ex
 sten & residen plenius liquet, Cum ho
 quod idem Def' verificare vult quod p̄
 dicta' Scripte Obl Cent Lib in Record
 recupaō p̄dicta' superius spee, Et p̄
 dicta' Scripte Obl 100 l. unde p̄dicta' Quid
 in p̄dicta' Cur hic vers ipm Def' mod
 nare sunt und & idem Scripte Obl & no
 al neq̄ divers q̄d p̄dicta' A. B. in Re
 cord recupaō p̄dicta' superius quer no
 minae & p̄dicta' A. B. jam quer sum
 und & ead pson & non al neq̄ divers
 Et q̄d p̄dicta' C. D. in Record recupa

nd p^{re}dict' sup^{er}ius Def' nominat, Et p^{re}dict' C. D. modo Def' sunt un^{de} & eadem
son, Et non al' neq^{ue} diversa, Et hoc
arat est verificare, Unde per Judic' si
dia' A. B. p^{er} un^{de} & ead^{em} Causa acc^{us}on^{em}
nam p^{re}dict' iterum versus ip^sum C. D.
ere debeat, &c.

By *Ashton* and *Prisot*, he that pleads a Re-
covery ought to begin at the Original, and
not to omit so much as any Continuance,
summons or Severance, 36 H. 6. 5.

If hereupon the Plaintiff suffer a Nonsuit,
then it follows thus:

Super quo p^{re}dict' A. ad replicand^{um}
p^{re}dict' p^{re}dict' C. sup^{er}ius in Barr^{is}
stat^{us} solemn^{iter} exat^{us} non ven^{it} nec est
pos^{it} h^{ab}ere su^{um} p^{re}dict', Ideo cons^{ens} est
p^{re}dict' A. & p^{re}dict' sui de p^{ro}ss^{us} sint in
nia, &c. Quer^{it} nota p^{re}dict', &c. Et quod
p^{re}dict' C. eat inde sine die, &c. Cons^{ens} est
tiam q^{uod} p^{re}dict' C. recuperet Usus p^{re}dict'
at A. 90 s. p^{ro}vis^{us} & Custag^{us} suis p^{er} ip^sum
circa sect^{us} suam in hac parte susten^{it} ei-
dem C. p^{er} discret^{ion}em Justic^{ie} hic adjudic^{at}
ed^{em} form^{am} Stat^{us} in hac parte edit^{us} &
obis, Et q^{uod} idem C. heat inde execu-
tion, &c.

In Coi' Banco.

Mia'.

Execution for
Defendant.

G. Cree of A. brings Debt sur Obl
versus B.

Def' pleads
another Re-
covery in
Common-Pleas,
and refers to
the Record in
the King's-
Bench, sent
thither by
Writ of Er-
ror.

Averment of
the Bond,
Money and
Persons.

ff. **A**ction non, Quia dic qd diu ante
impetrac' brevis Original' p'dict'
G. scit Termino, (Ec.) Anno, (Ec.)
p'dict' A. in vita sua in p'dict' Cur
Regis de Banco hic scit apud Westm'
coram G. C. Mil' & Sociis suis, (Ec.)
p' cons' ejusdem Cur de & super p'dict'
Script' Obl' hic in Cur' plac' recuperavit
versus ipm' B. tm' p'dict' Cent' Lib' de
debo qm' 90 s. qui (Ec.) Unde Convia
fuit put p' Record' & Process' inde qu
cum omnibus ea tangen' virtute cujus
dam brevis dic' Dñi Regis de Error
corrigend' ad p'secut' p'dict' B. plac' G. C.
direct' coram dia' Dño apud Westm'
die, (Ec.) Anno (Ec.) miss' fuit, &
que in Cur' Dñi Regis nunc coram ipso
Rege virtute p'dict' brevis de errore jam
remanent & resident & in suo plen' re
boze & effectu minime reverts' seu ad
nullat' ext'at, Et idem Def' ulterius di
cit qd Scriptu' Obligatoriu' hic in Cur'
plac', Et p'dict' 100 l. in eod' spec' ac
p'dict' Script' Obl' super quo p'dict' A.
sic ut p'fertr' recuperabit versus ipm' B.
p'dict' 100 l. & dia' 100 l. in eod' Script'
menconat' sunt un' & idem Script' & un'
& ead' 100 l. Et non al' neq' divers'
Script' neq' al' neq' divers' 100 l. Ob
p'dict' A. cujus Cree p'dict' G. modo
quer' est & p'dict' A. qui recuperabit de
bum p'dict' in Cur' hic est un' & eadem

et non alia neque diversa, Quod
 B. Et p̄dict' B. versus quem Ju-
 dum p̄dict' in Cur' hic reddit' fuit est
 et eadem p̄sona et non al' neq' diversa,
 hoc (Ec.) Unde per judic' si (Judicio
 in suo pleno robore et effectu sic re-
 men et adhuc m̄d' reversat' et adnul-
 cristen p̄dict' B. Actionem suam p̄re-
 stus cum habere debeat, Ec. Vide
 ile in Abatement, Rob. Ent. 2.

A. B. versus E. f.

Crion non, Quia die qđ als scilt
 Term Sed Michis Anno Rñi die
 Regis nunc 7. in Cur' dcd Dñi Re-
 nunc coram ipo Rege eadem Cur'
 d Westm in Com' Midd' tunc existend'
 A. B. p nomen (Ec.) p C. D. At-
 sud vend et tunc ptulit in eadem
 quandam villam suam vers' p̄lat'
 f. per nomen, (Ec.) adtunc in cu-
 Marr Marese Dñi Regis coram ipso
 existend' de p̄lito debi, Et inven-
 de p̄rox scilt Johem Doe et Ricm
 per quam quidam Villam, Idem
 B. p p̄dict' nomen (Ec.) querebatur
 p̄lat' E. f. p p̄dict' nomen E. f. als
 (Ec.) in custod' Marr Marese sic
 p̄fertr existend' de p̄lito qđ redderet
 sol. leglis Monet Angl quas ei de-
 et injuste detinuit p co videlt qđ
 p̄dict' E. f. decimo die Maii An-
 Dñi 1694. apud (Ec.) p quoddam
 scriptum suum Obv Sigillo ipsius E.
 llat, Curicq' dcd Dñi Regis tunc
 ibidem

Defendant
 pleads ano-
 ther Recove-
 ry in Debt by
 Non sum infor-
 matus.

ibidem ostens^{us} cujus dat^{um} fuit eidem
 & anno cogit se teneri & firmit^{er} obligat^{us}
 pdict^{us} A. B. in pdict^{is} 300 l. solvend^{is}
 dem A. cum inde requisit^{us} esset pdict^{us}
 men E. licet sepius requisit^{us}, &c. p^{er}
 trescent lib^{ras} p^{er}fat^{us} A. adtunc non solv^{it}
 set sed ill^{ud} ei tunc ult^{imo} solvere omni^{um}
 contradixisset & adtunc contradic^{tor}
 dampnum ipsius A. 30 l. Et inde p^{er}
 duxit sextam, &c. posteaq^{ue} scit die
 bis — p^{er} post Octab^{is} Sed Hillari^{um}
 tunc p^{er} sequen^{tem} & jam ult^{imo} elaps^{us}
 quem diem pdict^{us} E. fuit licen^{te} ad
 lam pdict^{am} interloquens, Et tunc ad
 spondens, &c. coram D^{omi}no Rege ap^{ud}
 Westm^{onasterium} ven^{it} t^{em}p^{or}e pdict^{us} A. p^{er} Atto^{rum} su^{orum}
 pdict^{am} quam pdict^{us} E. p^{er} G. H. Atto^{rum}
 suum, Et idem A. petiit q^{uod} pdict^{us}
 ad Parr^{em} suam pdict^{am} respond^{ere}, Sup^{er}
 pdict^{us} E. defend^{it} vim & injur^{iam} quando,
 Non inform^{is}. Et idem Atto^{rum} pdict^{us} E. dixit q^{uod}
 non fuit inform^{is} p^{er} eund^{em} E. Magist^{rum} su^{um}
 de aliquo respons^{us} inde p^{er} eodem E.
 loquela pdict^{am} dand^{am}, Et nichil aliud
 tunc dixit in barram sive p^{re}clusion^{em}
 t^{em}p^{or}e ipsius A. pdict^{us} p^{er} q^{uod} idem A.
 man^{us} vers^{us} eund^{em} E. inde indefens^{us},
 Judic^{is}. Ideo adtunc & ibi p^{er} eandem
 cons^{ens} fuit q^{uod} p^{er} A. recuperaret vers^{us}
 E. deb^{itum} suum p^{er} necnon 5 s. p^{ro} d^{am}ni
 nis suis que sustinuit t^{em}p^{or}e occ^{as}ione de
 t^{em}p^{or}e deb^{itum} p^{ro}mis^{is} & custag^{is} suis p^{er}
 circa sextam suam in ea parte app^{ar}
 eidem A. p^{er} Cur^{iam} die D^{omi}ni Regis
 ibi ex assensu suo adjudicat^{us}, Et
 E. in M^{ag}ist^{rum}, &c. put^{us} p^{er} Record^{um} & p^{ro}ced^{um}

Prout per
Record^{um}.

de in dict' Cur dict' Dñi Regis coram
 Rege residen manifeste liquet &
 paret, Et pdict' E. ulterius die qd
 scriptm Obl pdict' in Recordu judic re=
 ration spec unde idem A. debum pre=
 in forma pdict' recuperabit, Et
 script Obl pdict' p stat' A. modo hic
 Cur plac sunt und idemq Scriptm
 non al neq diversa hoc parat est
 rificare unde ex quo idem A. debum
 p ipm modo petit in forma pdict'
 indudum recuperabit idem E. per ju=
 rium si pd A. (Recordo Judicii Recu=
 ton pd in omnibus plen suis robore
 rore & effect' adhuc existen Accon suam
 inde Alus eum here debeat, &c.
 Quer Repl nul tiel Recordu Recupa=
 debi pdict', &c.

Averment.

Nul tiel Re=
 cord'.

Vide 1 Saund. 90. Bro. Met. 251, 253.
 Aff. 79.

For pleading of a Record, vide 1 Inst. 225,
 5 Co. 52, 218, 260. 10 Co. 92. Stiles
 22. Yelv. 39. 2 Cro. 817.

Note, That a Record in the King's Bench
 may be certified to an inferior Court by Cer=
 tificari and Mittimus. 1 Saund. 98, 99.

Vide Saund. 2 Rep. 25, 26, &c. of what Re=
 cords may be transmitted by the Chancery into
 King's Bench.

Auterfoits Bar,

Is a Plea of the same Nature with the for=
 mer; and therefore it is said, that *Ley Ga=
 in Detinue* is a good Bar in an Action of
 Case for the same Goods. 12 Ed. 4. Bro.
rien sur le Case, 92, & 110. So

So in Account upon Goods delivered, it is a good Plea to say, That in a *Detinue* before brought by the Plaintiff, the Defendant dwage his Law. 2 R. 3. 14, & 19.

In Case for Words of Perjury, Defendant pleads a former Action brought for the same Words; whereupon he justified, and a Verdict and Judgment for the Defendant, *Hern* 151.

So in Case upon *Assumpsit* to pay 50 s. Defendant pleads, that the Plaintiff brought an Action of Debt, and declared upon an *Indemul Computasset*, and that the Defendant then pleaded *Nil debet p Legem & pter Legem*, and avers that the Suit was for the same 50 s. To which the Plaintiff replies, That they were several Debts, and traverses that they are the same. *Idem* 230.

And in Affize it's said, That a *Retraxio* by the Plaintiff in another Affize is a good Bar; but that it is otherwise of a Nonsuit, 15 Ed. *Fitz. Affize* 96.

But if the Plaintiff be once barr'd by Judgment in the same Action, or in one of the same Nature, he shall be also barr'd in another meaner Action.

Yet in *Bro. Bar* 11. 20 *H. 12.* & 43 *Ed. 2.* in Debt,

It's said, That if the Defendant plead a former Recovery by the Plaintiff in a real or personal without Execution, it is a Bar; because he that recoveerd may at his Election bring a new Writ.

And *Bro. Bar* 43. *Auterfoits* recover in account, Debt, Trespass, and *Dumort* is a Plea, if he says not that he had Execution.

And by 4 *Ed. 4.* 54. two Judges for it, and so against it: But agreed, that if a Man recover upon a simple Contract, he shall not have a new Action, because the Duty is changed.

And *T. 40 E. 3.* in Trespass the Defendant said, that the Plaintiff *auterfoits* recovered 40 s. for the same Trespass, and good. *Vide Bro. Judgment 47.*

And 18 *Ed. 4.* 28. *Bro. Joinder in Action*, is said, That in Trespass upon the Statute of *R. 2.* by three Persons, a Recovery of a third part of a Moiety against one of them, and Execution thereupon, a good Bar, and so *Ed. 4.* 50.

And so by 4 *H. 7.* 7. three are bound jointly and severally, but Execution is had only against one of them; yet this shall be a good Bar for the other two.

For Precedents of this Nature, see *Raft. 665.* Trespass for Fish taken; Bar by Judgment upon Verdict for the same Trespass, *pl qd Def cepit plur pisces quam in toxi action.*

So *Co. Ent. 50.* Appeal of *Mayhem*; Bar by Judgment in Trespass and Assault, *Demur inde. Vide 54.*

Debt upon Bond; Bar by a former Judgment upon the same Writing, *Hern. 299.* 223, 224.

Hern 357. In Dower, to part a former Recovery, &c. *Repl. Qd prius Judicium non sit hic de eisdem terris.*

And see *Dyer 299.* That it is a good Plea Debt upon an Action grounded upon a Statute or Judgment, that the Plaintiff had sued and made Execution upon the Judgment Statute.
And

And if the Action be grounded on a Personal Contract in Writing, as a Bond, or other Especialty, that the Plaintiff sued the same Obligation once before, supposing the Condition was broken, and was barred therein. *5 Co. 43. Dyer 51, 256.*

If it be a Debt on a Contract without Especialty, in which Action Wager of Law doth lie; it is a good Plea, that before this Time the Plaintiff brought another Action for the same Debt therein, and that the Defendant waged his Law, and barred the Defendant therein; or that the Plaintiff brought an Action of the Case for the same Debt before, and recovered the same therein. *4 Co. 94.*

But that if Debt be upon a Parol Contract without Specialty, or if it be for Goods sold it is no good Bar, that a Stranger hath made an Obligation to the Debtee for the same Debt. *3 Co. 22. Fitz. Bar. 75.*

So in Debt, to plead that the Plaintiff upon a Justices had a Judgment for the same Debt in the County Court, it seems is no good Plea, unless Execution be made upon it. *6 Co. 49. Bro. Debt 29. See Lev. Ent. 212.*

So if a Judgment be had upon an Especialty, the Debt upon the Especialty is gone; and if Debt be upon a Contract or Arrearages of Account, and after the Debtee take an Obligation from the Debtor for the Money, the Debt upon the Contract is gone, (but if the Obligation be made by a Stranger, contrary for so long as the Judgment is in Force, or the Obligation in Being, the Creditor cannot sue upon the Obligation in the first Case, or the Contract or Account in the last. *6 Co. 47. Dyer 21. F. N. B. 120.*

Recupatio p[ro]p[ri]etatis in p[ri]mo ac[ti]one, &c.
 Inch. Ent. 99. 62, 188. Bro. Vad. 76. Tre.
 o. 163. 1 Lut. 833. 2 Lut. 945, 1414.
 Lev. Rep. 122, 173, 176, 196. 1 Bro. 19.
 o. Red. 105. Vidian 19, 45, 46, 166.
 ff. 176, 177, 178, 182, 186, 196. Vide
 Part. Instr. Cl.

General Bar by Statute of Limitations
 pleaded.

C[ir]ca non quia dicit q[uo]d p[er] quendam
 A[du]m in Parlamento D[omi]ni Jacobi
 p[er] Regis Angl[ie], &c. Anno regni sui
 vicesimo p[ri]mo apud Westm[onasterium] in Com[mun]i
 id[em] tunc edit[um] int[er] alia inactit[um] fuit
 auctoritate ejusdem Parliamenti q[uo]d
 omnes Ac[ti]ones C[on]tra Quare clausu[m]
 p[ro]p[ri]etatis, &c. (recitatu[m] le Statute) p[ro]ut p[er]
 idem A[du]m plenius liquet & appa[re]t.
 Et idem C. ulterius dicit q[uo]d p[er]
 Sessio Parliamenti finivit Vicesimo
 nono die Junii Anno regni dicti nuper
 Regis Jacobi vicesimo secundo, Q[uo]d
 p[ro]p[ri]etatis & assump[ti]on[is] p[re]dicta[rum] in Par[li]am[en]to
 superius fieri supp[ro]p[os]it[um] fact[um] fue[rit]
 into die Junii Anno regni, (&c.)
 q[uo]d p[re]dicta W. billam suam p[re]dicta ver[um]
 ipsum C. decimo die Junii jam ult[er]i[us]
 p[ri]mo exhibe[re] que quida[m] billa
 forma p[re]dicta exhibe[re] non exhibe[re] fuit
 tra tres annos p[ro]p[ri]etatis post finem p[re]dicta[rum]
 Parliamenti vel infra sex an[no]s
 p[ro]p[ri]etatis post sepales p[ro]p[ri]etatis & assump[ti]on[is]
 p[re]dicta fact[um] sc[on]d[u]m formam Statuti
 &c. Et hoc parat[um] est verificare, Unde
 sit judicium, &c.

Statut' de
 Limitacon'
 plede al Ac-
 con' sur le
 Case.

(D. c.)

Repl'.

(Precludi non) quia die qđ bene veru ē qđ ipe idem W. exhibuit Billam suam pđictā versus p̄fat T. p̄dicto decimo die Junii jam uie p̄terit p̄dictā T. superius inde allegabit, Et idem W. ulterius die qđ p̄dictā T. inter sex annos ante diem exhibitionis Billę ipsius W. p̄dictā assumpsit super se modo & forma put idem W. versus eum queritur, Et hoc, (Ec.) Unde, (Ec.)

Rejoinder.

Et p̄dictā T. dicit qđ ipe ad aliquod tempus infra sex annos p̄r ante p̄dicto diem exhibitionis Billę p̄dictā W. assumpsit super se modo & forma p̄dictā W. superius inde versus eum queritur, Et de hoc p̄dicto se super p̄dictā Et p̄dictā W. sitit, Ec.

Aliter.

Actōn non, Quia die qđ Billā p̄fat R. p̄dictā 21 die post An̄ regni dicit Dñi Regis nunc septem vers ipm J. P. in Cur hic primo exhibe fuit, Quod post causam actionis p̄dictā accrebit sex anni & amplius clausa fuer ante diem exhibitionis Billę p̄fat p̄dictā, Et hoc, (Ec.) Unde, (Ec.)

Demurrer.

To this the Plaintiff demurs — Et p̄dictis eo qđ p̄dictum p̄dictā non apparet p̄dictā Billā p̄dictā R. exhibe fuit p̄dictā vicesimum primum diem post p̄dictā p̄dicto p̄dictā J. mentionat non Etiam eo qđ p̄dictā J. p̄dictum p̄dictā non ostendit quo tempore clausa Actōn p̄dictā ule accrebit, Etiam eo qđ p̄dictum p̄dictā J. insufficientis est materia & forma.

Defendant rejoins, — This Action was brought in Debt against the surviving Sheriff of Bristol; and the Plaintiff sets forth, That he sued out a *Testatur Cap ad satisfaciend* against one *J. H.* and that thereupon the Defendant, and one *T. B.* then Sheriffs, took the said *J. H.* in Execution, and afterwards suffered him to escape, (the Plaintiff not satisfied of his Debt and Costs,) and that afterwards *T. B.* died, by which an Action accrued to the Plaintiff against the Defendant, the surviving Sheriff; and the Defendant pleads the Statute, as above.

The Plaintiff's Counsel argued, That an Action of Debt for Escape was not within the Statute of Limitations, which says, *All Actions of Debt grounded upon any Lending or Contract without Specialty; All Actions of Debt for Arrearages of Rent, shall be brought within Six Years, &c.* And for this he gave Two Reasons:

1. Because this Action is not founded upon any Lending or Contract without Specialty, but only a Duty created by Law, without Lending or Contract.

2. That this Action of Debt upon Escape is founded upon a Specialty, *id est*, upon a Statute Law, 1 R. 2. cap. 12. and so out of the Statute of Limitations; for at Common Law no Action of Debt lies against a Gaoler for an Escape out of Execution, but only an Action of the Case, 2 Inst. 383. And that an Action of Debt for Arrearages of Rent served by Indenture, was not within the Intention of the Statute. *Hutt. 109. Cro. Jac. 513.*

Q

The

The Defendant's Counsel argued on the contrary, and that the Law had made it a Contract; and that the Statute had not distinguished between Contracts in Law and Contracts in Deed; and that it was not merely founded upon the Statute of 1 R. 2. because the Writ and Judgment were on Record before the Escape; and that the Defendant might have pleaded *Nil debet*, which he could not to an Action founded upon a Record.

But notwithstanding, the Court held the Plea ill, and that this Action was not within the Statute of *Limitations*: But agreed to an Exception taken by the Defendant to the Declaration, for that the Plaintiff had only shewed that he sued an Execution, upon which a *Hill* was taken and escaped, but had not shewed that the Plaintiff had recovered any Judgment as he ought; for that the Plaintiff might have pleaded *Nul tiel Record*, as in 8 Co. 142, See 1 Saund. Rep. 36, 37. *Jones versus Pope*.

Thereupon the Plaintiff pray'd to discontinue his Action, which was granted him upon Payment of Costs, &c.

Aliter.

A Etion non, Quia die quā Villa prædicta ipius J. exhibit fuit 8 diebus Aprilis Anno regni Dñi Regis nunc vicesimo & non antea Quia causa actionis super quam prædicta J. versus prædicta superius narrabit non accrebit infra sex annos præ ante exhibitionem Bille prædictæ Et hoc, (Ec.) Unde (Ec.)

To this the Plaintiff demurs generally, and the Defendant rejoins.

This was in an Action of Debt to stand to Arbitrement or Umpirage to be made under Hand and Seal, and brought for 15*l.* which the Umpirator accordingly awarded the Defendant to pay the Plaintiff in full Satisfaction of all Debts, Accounts, and Demands.

The Question was, Whether this Action of Debt upon Arbitrement was within the Statute of *Limitations*, or not?

1. The Plaintiff's Counsel said, It was Debt upon Specialty under the Hand and Seal of the Umpirator, and To out of the Intent of the Statute.

2. The Defendant said, It was no Specialty, because the Submission being not by Specialty, the Defendant might wage his Law, which he could not do against a Specialty, 1 *Roll.* 107. It was answered to be a good Specialty to prevent the Limitation of the Action, and converted it to an *Account*; where, if the Plaintiff declares upon Receipt by the Defendant's Hands, the Defendant might wage his Law, but not when he declares upon a Receipt by the Hands of another: Also that the Statute intended Debt for Arrearages of Rent upon a Lease Parol, (*Hutt.* 109.) and not by Specialty.

That all Actions of Debt without Specialty generally are not limited, but only all Actions of Debt grounded upon any Lending Contract without Specialty.

As to an Objection, That it was grounded upon a Contract raised by the Law; it was answer'd, That all Actions of Debt are grounded upon a Contract, raised either *en Fait*, or by Construction of Law, and that such an

Exposition would limit all Actions of Debt without Specialty generally, which was not the Intention of the Statute, but only for Actions which were grounded upon any Lending or Contract *en Fait*. And that this was not so grounded, but *Debitum quasi contractu*; for which the Law gives an Action of Debt, although there is no Contract between the Parties.

And so it is of a Recovery in Trover or Trespass in the County-Court or Court-Baron. So of Debt, which is *debitum ex delicto* for an Amercement in a Court-Baron: So Debt of 3 *l.* for a Pound-breach, according to the Custom of the Manor, 11 H. 7. *fo.* against which the Defendant may wage Law, and that these rarely happen'd. Debt upon Contracts *en Fait* being so frequent, the Makers of the Statute intended to limit the one, without Regard to the other. *Et ad ea quæ frequentius accidunt Jura adaptantur*, *Hob. Rep.* 109.

Upon the Whole the Court resolv'd, That it was a sufficient Specialty to prevent the Statute, and that it was not grounded upon Lending or Contract; and Judgment for the Plaintiff. Whereupon the Defendant brought a Writ of Error, but was nonsuited. 2 *Saund. Rep.* 62, 63, &c. *Hodgden vs. Harridge.*

1 *Saund. fo.* 38. Debt for Escape upon Statute of 1 R. 2. *cap.* 12. and Debt for Rearages of Rent reserved by Indenture. Action upon the Statute of 2 E. 6. *cap.* Of Tythes, &c. are not within the Statute's Limitations.

Saund. 65, 66, 67. An Arbitrement under Hands and Seals of the Arbitrators, is a Specialty not limited by the Statute.

Co. 66. Actions of Debt for Arrearages of Rent, reserved upon a Lease by a Specialty, are not within the Statute.

Co. 66, 67. Actions of Debt founded upon Contracts *en Fait*, and not Actions of Debt founded upon Contracts rais'd by the Law, are within this Statute, and limited by it.

Co. ibid. Action of Debt upon an Arbitrement, is not founded upon a Contract within the Intent of this Statute.

Co. 67. Action *de rationabili parte hore*, altho' it is no other than an Action of Debt, is not within this Statute, nor limited by it.

Co. 120, 121. The Privileges by reason of Infancy, and other Impediments, are saved in an Action *on the Case* upon *Assumpsit* by this Statute; and the said Action is within the Intendment of the saving Clause of it, although it is only named in the limiting Clause.

Co. 121. An Infant may pursue his Action any Time within Age, although the Years limited by the Statute are past during his Infancy, and he need not to tarry till he be of Age.

Co. 125, 127. The Exception in the Statute, *Accounts which concern Merchandize, &c.* (that they may not be limited) extend only to Accounts current between Merchants; but not to Accounts stated between them.

And that Actions *upon the Case*, for Money lent upon a Bargain between Merchants for Merchandizes sold, are limited by the Statute,

and not within the said Exception; for Accounts only are excepted, and not Contracts. *Idem* 125, 126, 127. *Vide* 2 *Ven.* 256. 1 *Br.* 75, 181. 2 *Bro.* 93. *Bro. Red.* 99. 110. *Br. Met.* 51. *Bro. Vad.* 113. *Vidian* 25. 76. 1 *M.* Int. 29. 2 *Mo. Int.* 138. *Rob. Ent.* 442. *Thomp.* 6 *Cl. Aff.* 195, 181, &c.

*General Bar by Disability of the Plaintiff
pleaded.*

Outlawry.

IN Debt upon Bond, the Defendant is parled till the next Term; afterwards he may plead that the Plaintiff is outlaw'd: And it seems that the Reason is, because the King shall have the Debt upon the Bond. But otherwise in Trespass, Battery and Debt upon Simple Contract, 16 *Ed.* 4. 4. *a. per Brian.*

Bastardy.

So in *Mortdancesfor*, after Imparlance, the Tenant may plead Bastardy against the Demandant, 22 *Ed.* 4. 36. *a. per Hufsey.*

Note, That in Debt upon Contract the Defendant pleaded Outlawry after Imparlance. The Plaintiff replied, *Nul tiel Record*, and the Day the Defendant failed therein, and Judgment final was given, 1 *Cro.* 556. 2 *Cro.* 44. But if the Outlawry had been reversed after the Plea, 'tis otherwise.

For in Debt upon Bond the Defendant pleaded Outlawry in Bar: The Plaintiff replied, *Nul tiel Record*, and Day given; and the mean Time the Plaintiff reversed the Outlawry, and thereby it became *Nul tiel Record ab initio*: And the Replication was good notwithstanding, it being pleaded in Bar, and true at the Time of pleading thereof; and the Defendant

ndant brought not in the Record by reason
the Reversal. Judgment final was not given,
at a Respondi Ouster. *Yelv.* 36. *Dyer* 288.
Co. 142. 1 *Brownl.* 833. 1 *Cro.* 566. 2 *Cro.* 484.
Cro. 270.

For the Manner and Form of pleading
lawries, and when it shall be in Disability
of the Person, and when Bar of the Action,
see before *Abatement in Disability of the Plain-*
ff.

A. versus B.

Quando, (Ec.) Et die qđ pdict' A. *Utlary in Bar*
(Acton non) quia die qđ quidm̄ *pleaded brief-*
D. als scilt Term Sed Hilt anno reg *ly.*
Dñi Regis nunc septimo implitabit pre-
dict' A. in Cur dicti Dñi Regis de Ban-
co hic de p̄lito debi super demand 50 l.
dictusq; A. p eo qđ non ven in pdict'
Cur dicti Dñi Regis de Banco p̄dict'
lat C. D. responsue secundum legem
cons huius Regni Angl in exigend
die fuit ad Utlagand in London, Et
a ocone postea scilt die . . . pr'
ost festum . . . Anno regni dicti
Dñi Regis nunc septimo supradicto in
London pdict' ad sextam pdict' C. D.
Utlagat fuit put p Record & Process in-
e in pdict' Cur dicti Dñi Regis de
Banco pdict' hic residen plenius liquet
apparet, Que quidem Utlagaria ad-
ue in suo pleno robore & effectu remanet
id reversat seu adnullat, Et hoc parat
i verificare, Unde per Iudiciu si p̄c-
dict' A. actionem suam pdict' inde vers

Averment.

ipm B. Here seu manut. nere debeat, Et
Cum hoc qđ idem B. verificare vult
qđ pđia' A. in brevi & Parr pđia' su-
perius specificat ut querens versus pñat
B. superius nōiat, Et idem A. in pñat
Recordi Atlagarie pñat' sūt nōiat est
una & eadem pñat' & non alia neq; di-
versa.

Vide ante Tit. *Abatement.*

Aliter in Bar pleaded at large.

M. versus M.

Original Ret.
15 Pasch.

Retorn' Vic'.

Copias.

ff. **A** Etōn non, &c. Quia die qđ qui-
dam R. S. alias scilicet 10 die
Junii anno regni Dñi Willi nunc Re-
gis Angl, &c. septimo pñecut fuisse
quoddam breve Original dicti Dñi Re-
gis de debito tunc Die Sōmset dire-
ctus versus pñat' M. per nōen, (&c.) retorna-
bile coram Justie dicti Dñi Regis de
Banco pñat' a die Pasche in quindecim
dies tunc pñ' sequent supponen p idem
hō qđ idem M. pñat R. S. debuit &
injuste detinuit sol. Ad quem diem co-
ram G. C. Mil & Sociis suis dicti Dñi
Regis de Banco hic scilicet apud Westm
pñat' ven pñat' R. S. per A. B. Re-
torn suū, Et obtulit se quarto die pñat
pñat M. de pñato pñato & ipse non ven-
tū tūc Die pñat' Com S. pñat
hōis pñat' coram pñat tunc Justie apud
Westm pñat' ad diem ill retorn qđ pñat
pñat' M. nichil fuit in ballia sua ubi au-
p quod suū potuit, Quo pñatu quod-
dam hō dice Dñi Regis de Capias
verus

versus prefat. M. tunc Die Com. S. pre-
 dicta direct. retornabile coram prefat. tunc
 Justie apud Westm. pdict. a die Pasche
 quinq. Septimanas tunc pr. sequen. ad
 pdict. R. S. de plito pdict. in hac
 parte ab eadem Cur. de Banco emana-
 vit, Ad quem diem coram prefat. G. T. &
 Justis suis Justie dict. Dñi Regis de
 Banco hic scit apud Westm. pdict. ven-
 dit R. p. Attorn. suum pdict. & obtulit
 quarto die vsus prefat. M. de pōco pla-
 to & ipse non ven. deusq. tunc Die ad-
 ne & ibm ptextu ejusdem hris retorn.
 pdict. M. non fuit inveni. in ballia
 a, Ad quem diem quoddam brebe de
 Capias adtunc & ibm prefat. tunc
 S. direct. retornabile coram prefat.
 Justie apud Westm. pdict. in Cra-
 no Scē Trinitatis tunc pr. sequen.
 versus prefat. M. ad sect. pdict. R. S. de
 pōto plito in hac parte ab eadem Cur.
 Banco emanabit & ipse tunc non ven.
 usq. tunc Die adtunc & ibm ptextu
 ejusdem hris retornabit qd. pdict. M.
 non fuit inveni. in Ballia sua Qua de
 pōta quoddam bre. dicti Dñi Regis de
 Cur. Capias in hac parte eidem tunc
 S. direct. retornabil. coram prefat.
 Justie apud Westm. a die Scē
 Trinitatis in tres Septimanas tunc pr.
 sequen. versus prefat. M. ad sextam pre-
 dict. R. de predicto plito in hac parte
 ab eadem Cur. de Banco emanabit, Ad
 quem diem coram prefat. tunc Justie
 apud Westm. pdict. ven. pdict. R. p.
 Attorn. suum pdict. & obtulit se quarto
 die

Ret' quinque
 Pasch'.

Retorn' Vic'.

Alias Cap'.

Retorn' Cro'
 Trin.

Retorn' Vic'.

Plur' Cap'.

Retorn' tres'
 Trin'.

die versus prefat M. de predicto plita
 ipse solemniter exat non veni, Idem
 tunc Die S. pretextu predicta huius
 Retorn' Vic'. plur Cap adtunc & ibi retornabit
 predicta M. non fuit invent in Ball
 Exigent. sua Sur quo quoddam breve de Eri
 fac in hac parte versus prefat M.
 dem tunc Die S. direct' retornabit
 ram eidem tunc Justie apud Westm
 predicta a die Sed Michis in un
 Ret' Mense Mich'. sem tunc pr' sequen ad sca' predicta
 ab eadem Cur Dni Regis de Ban
 emanabit, Ad quem diem coram pref
 tunc Justie apud Westm predicta veni
 dicta R. p Attorn suu predicta, Et C.
 Arm tunc Die predicta Com Soms p
 Vic' ret' Ex- textu ejusdem brevis adtunc & ibi
 gent'. tornabit quod ad Com suu tene ap
 Castrum Taunton in Com S. pred
 Primo. (tali die) predicta M. primo exat fuit
 non comperuit, Et ad Com suu p
 Com predicta tene apud Castrum C.
 Secundo. li die) predicta M. secundo exat fuit
 comperuit, Et ad Com suu tene p Co
 predicta apud (Ec.) tali die (Ec.) predicta M. tene
 Tertio. exat fuit & non comperuit, Et ad Co
 suu tene p Com predicta apud (Ec. ta
 Quarto. die, Ec.) predicta M. quarto exat fuit
 non comperuit, Et ad Com suu tene
 Com predicta apud (Ec. tali die) predicta
 Quinto. M. quinto exat fuit & non comper
 Ideo p Judic E. f. G. H. J. K.
 L. M. Coron dicti Dni Regis p Co
 predicta idem M. Utlagat fuit prout
 Utlagat' per Coron' Com'. Recor' & Process inde in dicta Cur
 Dni Regis de Banco hic resident p

us liquet, Que quidem Atlagat ver-
 pſat M. in forma p̄dice promulgaē
 hic adhuc in ſuis plen̄ roboze vigoze
 effectu remanet mie reberſat ſeu ad-
 ſtat, Et hoc parat' eſt verificare, Un-
 per Judiciū ſi p̄ M. dummodo ſic
 lagat' exiſtit Actionem ſuam p̄ ver-
 ſe here debeat, &c.

Vide 1 Bro. 7, 296. Thompſ. 8, 9, 206.
 b. 91, 92, 213. 1 Mod. Int. 205. 2 Ven. 281.

As to Outlawry you may obſerve further :

That it is no Plea againſt ſuch as ſue *en*
Auter Droit, as Executors and Admini-
 ſtrators. So in an Action brought by Mayor
 and Commonalty, Utlary in the Mayor is
 Plea. *Co. Lit.* 128.

Outlawry, no
 Bar againſt
 ſuch as ſue in
 the Right of
 another, as
 Executor, &c.

Yet ſome have held, That Excommunica-
 tion may be pleaded againſt an Executor, &c.
de 21 Ed. 4. 49.

In Attaint, Utlary of the Perſon is no In Attaint.
2 H. 7. 7.

It Attaint upon a falſe Verdict in an *Aſſize*,
 the Tenant in the *Aſſize* may not plead Ut-
 lary in one of the Plaintiffs, becauſe he had
 ſubmitted him to be answered in the *Aſſize*,
H. 7. 7.

Utlary in *Cheſter* and *Durham* ſhall not
 diſable the Plaintiff in any Court at *Westmin-*
ſter. *Ibid.*

Utlary in
 the County-
 Palatine.

In a Writ of Error to reverſe an Outlawry, Utlawry to
 Utlary in the ſame Suit, or at the Suit of any a Writ of Er-
 ranger, is no Plea in Disability of the Plain- ror.
 ; for that if he was diſabled in that Suit,
 if

if he be outlawed at several Mens Suits, he shall never traverse any of them. *Co. Litt.* 128.

In Appeal.

In an Appeal brought by one as Heir, it was held a good Plea to say, *He was outlawed* 22 E. 4. 40.

Utlary ought to appear on Record.

Before the Plaintiff or Demandant shall be disabled by Utlary, it ought to appear upon Record, and the Judgment after the *Quinto exactus* given by the Coroners in the County Court is not sufficient, until the Writ of *Exigent* be returned, and the Outlawry appear on Record. 2 H. 7. 7.

When Outlary comes generally, &c.

Outlawry in an Action personal, comes only to an Action personal in respect of the Person, but Outlawry in Felony comes to the Action generally. 23 H. 6. 19.

Appearance before the *Quinto exactus*.

Co. on Litt. 128. b. says, There are two Sorts of Appearances before the *Quinto exactus* to avoid an Outlawry; that is to say, *Appearance en Fait*, and *Appearance en Ley*: *Appearance en Fait*, is when the Party renders himself; *Appearance en Ley*, is by purchasing a *Superseadeas* out of the Court where the Record is, which is an Appearance upon Record; and therefore although it be not delivered to the Sheriff before the *Quinto exactus*, yet it shall avoid the Outlawry.

Pardon purchased after Outlawry pleaded.

And that if after Utlary pleaded, the Plaintiff purchases his Charter of Pardon; because the Charter has restored him to the *Ley*, the Defendant shall answer. Therefore note the Diversity, that it shall not abate the Writ, but disable the Plaintiff until he obtain his Charter of Pardon. *Id. ib.*

Also he says, That Outlawry may be reversed two manner of Ways, *id est*, by Plea, and by Writ of Error. Outlawry reversed.

By Plea, when the Defendant comes in by the *Capias* *Utlagar*, he may reverse it by Matter apparent, as in respect of *Supersedeas*, Omission of Process, Variance, or Matter apparent in the Record; yet some hold, that in another Term he is put to his Writ of Error. By Plea.

But for Matters of Fact, as Death, Imprisonment, Service of the King, &c. he is put to his Writ of Error, except it be in case of Felony, and there in Favour of Life he may plead it. By Writ of Error.

But although Imprisonment be a good Cause to reverse an Outlawry, yet it ought to be by Process of Law, and unwillingly, and not by Consent or Covin; for such Imprisonment shall not avoid the Outlawry, because 'tis his own Act. *Co. Lit. 259. b.* Imprisonment pleaded.

In 1 Hen. 7. 13. one outlawed of Felony was brought to the Bar to tell wherefore he should not have Death; and he pleaded, That he was imprisoned in *Castro Oxonie* temporary *Utlagationis*, and said not under whose Custody, nor in what County *Oxon* was, nor took Averment, *Et hoc, &c.* It was held no Plea. Incertainty, and no Averment.

If one be outlawed by the Name of *J. S.* generally, he shall not be received to say, that there are two *J. S.*'s of *D.* elder and younger; but he shall have his *Indemptio nominis*. 21 E. 4. 54. Misnomer avoided.

It's said, That if one be by *Cap* *Utlagar* Felony by the Name of *J. S. Gent.* when he is a Yeoman, if he do not appear and answer, Outlawry avoided for Mistake of Title.

swer, he may avoid it by Plea: But if he
 pear, and answer to the Name of Gentleman
 he shall not avoid it after the Plea. 1 Ed. 4. 2.
 10 Ed. 4. 16. 18 Ed. 4. 4.

Party put to
 Writ of Er-
 ror.

It is said in 39 H. 6. 1. That if the Ad-
 tion of Name or of a Vill be omitted, or
 Proclamation be in the County where
 dwells, &c. yet the Outlawry should not
 avoided by Plea; but the Party is put to
 Writ of Error.

In 8 H. 6. 37. the Defendant in the same
 Term came in Person, and annulled an Out-
 lary, for that it was not named of what
 County he was.

See the new Rules for reversing Outlawries
 In the Common Pleas 'tis said the Clerk of
 the Judgments does now reverse them.

Bar. For that
 the Plaintiff
 is attainted of
 Felony.

Action non, Quia die qd p qua
 dam Inquisitionem capte apud
 Castrum R. in Com R. (tali die & an-
 no) coram J. D. Mil et Justic De
 mini Regis ad plita coram ipso Reg
 tenendi assign & J. P. Mil et Just
 dicti Domini Regis de Banco Just
 ejusdem Domini Regis ad Gaolam
 Castri sui R. de Prisonar in eadem
 existend deliberand assign per sacra
 duodecim pborum & legium hominum
 de Com pdia compert & pntat fuit
 qd pdia A. B. p nom (Ec.) tali die
 anno in regia via apud F. vi & armis
 videlt gladiis baculis & cultellis in
 quendam C. D. in pace Dei & dicit
 Dni Regis ibm existend insult fec & ip

verberabit & maletractabit ita quod
 vita ejus despabatur ac duas Annus
 (Anglice Gold Rings) ad valentiam vi-
 ginti solidorum & viginti librarum in pecuniis
 merat de denariis bonis & catallis ip-
 sius C. a persona ipsius C. adtunc &
 felonice cepit & asportavit contra
 pacem dicti Domini Regis nunc coronam &
 mitat suas, &c. put per eandem Inqui-
 sitionem plenius apparet per qua quidam
 nia idem A. commissus fuit Prisonem
 Domini Regis Castri sui R. ibidem salvo
 moriendo quousque, &c. posteaque scilicet
 19 die Augusti anno 6. supradictam
 Justicie predictam apud Castrum R.
 predictam A. dictus fuit ad barram per
 die ejusdem Comitis in propria persona
 ac allocutus qualiter se vellet de felo-
 nia predicta acquietari dixit quod ille in
 hoc fuit culpabilis, Et de illo de bono
 malo posuit se super patriam, Super quo
 inde Jurat, &c. Et Jurat inde exat
 qui ad veritatem inde dicendum electus
 & jurat dixerit super sacramento suo quod
 A. fuit Culpabilis de feloniam predictam
 per indicamentum predictum superius supponit
 quod Comites fuit per Curiam ibidem quod idem
 suspenderetur per collum quousque, &c.
 itaque certis de causis eidem Justicie
 specialiter movendo idem A. remitte-
 re Prisonem dictam Domini Regis Castri sui
 quousque, &c. put per Recordum inde
 apparet, Et idem A. S. die
 Judicii predictam adhuc remanet & exi-
 t in suo roboze & effectum minime revocat
 annihilat aut per deum Deum Regem
 nunc

nunc pardon, Et hoc parat' est verificat
Unde pet' Judicium si p'dict' N. dicit
attinetur p'dict' actionem suam p'dict' de
sus etd here debeat, &c.

Vide Clift. 190.

An Michis 18 Car 2. R^s Jevens
sus Harridge & Ur'.

Note, Defen-
dants plead
that their In-
testate was an
Alien.

THE Plaintiff brought an Action of Debt
for Rent of a Messuage against the De-
fendant and his Wife, as Executors of R. Le-
mere, upon a Lease made to the said Le-
mere — The Defendants pray Oyer of the
Indenture, and then pleads that the Intest-
ate was an Alien Artificer, and that the Lease
was therefore void, 1 *Saund. Rep.* 5, 6.

The Plaintiff demurs; and the Exception
was, that the Defendants did not aver that the
Messuage demised was a Mansion-House,
which was the Intent of the Statute, for
it might be a Barn or Stable, &c. of which
Opinion was *Twisden* and *Windham*. *Kee*
said it should be intended a Mansion-House
prima facie, and the Plaintiff might have
replied it was not: *Moreton* Hesitavit. And
the Defendants fearing the Judgment would
go against them, paid the Plaintiff the
Rent and Charges, and so no Judgment was
given.

Quibus lectis & auditis iidem R^s
J. dic' qd p'dict' N. Actionem suam p'dict'
inde versus eos here seu manutentem
non debent qui dic' qd in Statuto
Parliamenti Dni Henrici nup' Regis
An

angl octavi apud Westm anno Rñi sui
 tent edit (int al) ordinat fuit au-
 pitate ejusdem Parliamenti qđ om-
 s dimiss alicujus Domus manconat
 e Shope infra hoc Regnū aut aliqua
 regis dominia concess (Anglice made)
 cui Alienigene Artifici (Anglice Ar-
 cer) aut Opifici (Anglice Handicrafts-
 en) extra die Dñi Regis obeisantiam
 et miē indenizat' existē (Anglice not
 ng a Denizen) ab & post festum Scđ
 chis Archi extunc pr' sequē post
 tionem Actus pdict' vacue & nullius
 eius forēt, Et iidem R. & J. ulte-
 s die qđ Indentur pdict' in narr'
 a' menconat' fac' fuit p pdict' R. J.
 at' R. L. pdict' 26 die Post Anno
 i ded Dñi Regis nunc 15. apud pre-
 t' Paroch Scđ Martini in Campis
 Com pdict', Qđq pdict' R. L. tem-
 e dimiss & confectō Indentur in
 e pdict' supius menconat' fuit Alie-
 gena (Anglice a Stranger) & Artifex
 tra die Dñi Regis nunc obeisantiam
 & miē indenizat' videlt' apud Pa-
 in Regno Francie, Et sic iidem R.
 J. die qđ dimiss pdict' ac Inden-
 pdict' in narr' pdict' menconat' eidem
 L. p pdict' R. sic ut pfertur fac' vir-
 e Act' pdict' vacua & nullius effectus
 denit, Et hoc iidem R. & J. parat'
 at verificare, Unde pct' Judic si pdict'
 actōm suam pdict' inde vers' eos ha-
 re seu manutenere debeant, &c. —
 der demurr', Et Def' jung' in morae
 R Trin

Trin 18 Car 2. No 133. Vide Cler
Assist. 113.

Note, Issue if one be an Alien, Hern 362

For that the Plaintiff is a Bastard.

Defendant
pleads, that
the Person
from whom
the Plaintiff
derives Title
was a Bastard.

Repl', Non
fuit Bastarda.

ff. **A**ction, &c. Quia die quod
pd' A. supponit jus Manerii p
dia' cum pertinet sibi de pdia' A. p
dium pdia' M. descendere debere eade
M. Bastarda fuit per quod nullum p
p medium pdia' M. pstat' A. descende
potuit, Et hoc, (&c.) Unde, (&c.)

Et pdia' A. (die pcludi non deb
Quia die qd pd' M. Soror? I. &c. litta
fuit & non Bastarda put pd' C. sup
allegavit, Et hoc, (&c.) Ideo xii, &c.

That the De-
mandant is a
Bastard.

ff. **E**t pdia' C. R. p A. B. Att
suum vendi & defendi jus suum qu
do, &c. Et die qd pdia' J. heres pd
C. C. esse non potest quia die qd id
J. Bastardus est, Et natus fuit ap
C. in Com pdia' in Diocess' P. Et
parat' est verificare viis & modis quib
convenit ac put Cur Reg hic cons, &
per' Judicium si pdia' J. ut fil' & h
pdia' C. C. Accon suam pdia' ver
cum habere debeat, &c.

Repl', Qd'
est Litterimus.

Et pdia' J. die qd ipse object
pdia' ab Accon sua pdia' hendi rep
non debet quia die qd ipse est Litter
& non Bastardus put pdia' C. R. sup
et objecit, Et hoc parat' est verificare

quando ac put Cur hic cons, &c. Et
 dia' T. R. filit', Et quia humoi cause
 gnitio ad forum spectat Ecclesiasticum,
 deo pelam publica hic facta est qd omi-
 s pstone, (&c.)

Vide Rast. Ent. fol. 279. b. Idem 105,
 9, &c. 1 Bro. 6. Officin. Brev. 15, 16.
 communicat. Plac. Vidian 42. Bro. Red 100.
 de ante Tit. *Abatements*.

General Rules to be observed.

If the Defendant have none of these last
 mentioned Pleas, he must either plead the
 general Issue, or some other Special Matter
 whereby to Bar the Plaintiff in his Action.

Much might here be said concerning Gene- Issues referr'd
 Issues, and Matters to be given in Evi- to a proper
 ce: Also for Precedents for several Sorts of Head,
 es, which are difficult enough in the draw-
 up. But these I will refer to a proper
 ad for that Purpose.

Likewise such Pleadings as relate to Execu- Pleas of Exe-
 and Administrators, I will place by them- curors and
 Administrators.

And here I shall take Notice, That there are
 by Heads, both ancient and modern, un-
 which Counts or Declarations are or may
 comprehended ;

Account.

Admeasurement.

Annuity.

Appeal.

Affize.

Attaint : And many more.

All which require their particular Pleas Bars, and would swell into a large Volume therefore I shall chiefly insist upon those which are most in Use;

As, { *Case,*
 Covenant,
 Debt,
 Detinue,
 Quare Impedit,
 Replevin,
 Trespass, and
 Waste.

But before I enter into these, it will be proper to set down some Rules concerning Pleas in general.

Pleadings
 strongly taken
 against
 the Pleader.

Court will
 not direct
 how to plead.

Counsel is to
 advise it.

Issuable Plea.

Plea direct.

1. And First, It is to be observed, that the Pleadings of every Man shall be taken strongly against himself; for every Man is presumed to make the best of his own Case.

2. The Court will not direct any Person how to plead, although the Matter be difficult, and though they be moved to do it, they will bid them plead it at their own Pleasure, because Council is to advise how to plead, and the Court is only to judge of the Pleading whether they be good in Law or not.

3. When the Court doth order the Defendant shall plead, it is intended he shall plead an Issuable Plea; for every Plea that a Man pleadeth ought to be triable, otherwise the Cause can have no End.

4. Every Plea must be direct, and not by Way of Argument or Rehearsal, and every

must plead such Pleas as are pertinent to him, according to the Quality of his Case.

7. Pleadings which only amount to the General Issue, are not to be allowed, but the General Issue is to be enter'd.

8. Where the Defendant may plead the General Issue, he ought so to plead, that the whole Matter in Question may once be tried.

9. The Plea must answer all the Matter contained in the Declaration, or else the Plaintiff shall have Judgment, altho' the Declaration be nought in some Part of it; for albeit the Defendant might have demurred to the Declaration, yet not doing it, it shall be imputed he had no Cause.

10. When a Man is authorized to do any thing by the Common Law, by Grant, Commission, Act of Parliament or Custom, he ought to pursue the Substance and the Effect of the same accordingly. — Yet where the Defendant is not constrained to plead a Special Plea, he may plead the General Issue proper for the Action brought, and give the Special Matter in Evidence; of which more hereafter in *Title Issues*.

11. In many Cases, for avoiding of tediousness, General Pleadings are allowed, and the particular shall come on the other Side, as if the Condition of the Obligation be to perform the Covenants in an Indenture; if all the Covenants be in the Affirmative, the Defendant may generally plead Performance of all; if any be in the Negative, to so many he must plead specially; so if any of them be in Disjunctive, he must shew which of them

General Issue.

To the Matter in Question.

Plea must answer the Declaration.

Authority to be pursued.

General Pleadings allowed, and when.

Covenants Affirmative.

Negative.

Disjunctive.

he hath performed; so if any of them are
be done upon Record, he must shew it
cially. *Co. Litt.* 303. 8 *Co.* 133. 9 *Co.* 25,
10 *Co.* 100.

Surplusage.

10. It's said *Surplusage* shall never make
Plea vicious, but where 'tis contrary to
Matter before.

Double Plea.

Yet every Plea ought to be single and
tain; for that Plea which doth contain
plicity or Multiplicity of distinct Matter,
one and the same Thing, whereunto sever
Answers (admitting each of them to be good
are required, are not to be allowed; so wh
the Defendant pleadeth Two Matters, each
them being a sufficient Bar to the Action,
less they be such as one of them do depend
upon the other; and then if the Defendant
may not have the last without the first, he
may be admitted: Yet when the Issue is
ken by the Plaintiff upon the One, he cannot
then have Advantage of the Insufficiency of
Plea, for he hath waived the other. 11 *Co.*
Kel. 37. See after *Protestando*, &c. 1st. *Vol.*
Rep. 48, 272. 2d. 68, 198.

Thing rests
in my own
Notice.

11. Where a Thing rests in my own Notice
I must plead this particularly, otherwise not.

Inducement
or Convey-
ance to Mat-
ter.

12. That which is alledged by Way of
ducement, or Conveyance to the Substance
the Matter, needs not to be certainly alledged
as that which is of the Substance it self.
Litt. 303. *Plow.* 81.

General Alle-
gation.

13. Where one comes in by Act of Law
the General Allegation sufficeth. 10 *Co.* 94.

Things Spiritu-
al.

14. Things Spiritual may be pleaded gen-
rally; and the Proceedings and Sentences

Ecclesiastical Court may be alledged brief-
Co. Litt. 303. Plowd. 65.

15. Where the Plea consists of Matter in-
finite, it may be pleaded generally. *3 Cro. 749.* Matter infi-
nite.

16. All necessary Circumstances implied by
the Law, need not be expressed in the Plea: Circumstan-
tial Matter.
in the Plea of a Feoffment of a Manor,
every and Attornment are implied. *Co. Lit.*

17. But when any Special or Substantial
Matter is alledged by either Party, that ought Substantial
to be specially answered, and not to be passed Matter.
over by a General Pleading. *Co. Lit. ibid.*

18. So Matters of Record, especially when Matters of
they are the Foundation or Ground of the Suit Record.
the Plaintiff, or the Substance of the Plea,
must be certainly and truly alledged, other-
wise where 'tis but a Conveyance. *Co. Lit. ibid.*
Plowd. 65.

19. General Estates in Fee-Simple may be Estates gene-
generally alledged, but the Commencements ral and par-
Estates in Tail and other particular Estates ticular.
must be shewed, unless in some Cases where
they are alledged by Way of Inducement,
and the Life of Tenant in Tail, or for Life,
ought to be averred. *Co. Lit. ibid.*

See after in *Averment.*

20. When a Count, Declaration, Bar, Re- Insufficient
socation, &c. are defective in respect of Plea helped
omission of some Circumstance of Time or by the ad-
place, there it may be helped and made good verse Party.
the Pleading of the adverse Party; but if
be insufficient in Matter, it cannot be help-

So in certain Words in the Count or

* 2 Vent. Rep.
222. Double-
ness in Narr'
cured by Def.
answering,
Vide postea.

Dilatory
Plea.

Declaration may be made good and certain by a Plea in Bar, by the Defendant's taking Notice of the Meaning of them. *—And altho' Words were not actionable in themselves at the Time of the Speaking of them; yet if an Action be brought for the Speaking of them, they may be made actionable by the Defendant's Pleading and Explaining the Words.

21. Where the Defendant pleads a dilatory and frivolous Plea, to the Intent to delay the Plaintiff, and to hinder him from going to Trial, the Court will, upon the Plaintiff's Motion, order the Defendant to plead such Plea as he will stand to, or else to accept of a Demurrer unto his dilatory and frivolous Plea, and upon hearing of Arguments thereupon, the Court is to judge whether the Plea be good or bad: And if such Plea be not good, the Court will not after permit him to amend it.

And when a dilatory Plea (as in Abatement) is over-ruled, there shall be a *Respone Deas Ouster*, except an Issue be join'd upon it, for then it is otherwise. Also upon Overruling of a Plea which is pleaded in Bar of an Action, Judgment shall be given against the Defendant, for such a Plea is peremptory.

Conclusion of
the Plea.

Next we will consider the Conclusion of the Plea, which is the latter Part thereof, and usually after this Manner: *Et hoc paratū est verificare, unde per Judicium*, &c. as you may observe throughout these Pleasings.

Proper Con-
clusion.

Yet each Plea ought to have its proper Conclusion; as, a Plea to the Writ, to conclude

Writ; Plea in Bar, to conclude to the Action; and an Estoppel, to rely upon the Estoppel, &c. *Lit. 303. b.*

Regularly all affirmative Pleas ought to conclude, *Et hoc paratus est verificare*: Pleas Affirmative.
 Pleas meerly in the Negative ought not to be averr'd, because Negatives cannot be proved. Negative.

And where the Defendant pleads to the Issue by Defendant.
 the Conclusion shall be, *Et de hoc non se super Patriam*. And where the Plaintiff pleads to the Issue, *Et hoc per quod requiratur per patriam*. By the Plaintiff.

If a Man pleads to the Action, he ought to demand Judgment *si Rectum*. 8 H. 6. 28. To the Action.

If a Man pleads in Abatement of the Writ, and conclude Judgment *si Rectum*, it is not good, because by such Conclusion he affirms the Writ, and so the Plea is repugnant in it. Conclusion repugnant.
 —But if one pleads to the Action, and conclude Judgment *del Brief*, it is good, because he cannot have a good Writ, if he be averr'd of his Action. 36 H. 6. 17.

If one pleads sufficient Matter in Bar, and demand Judgment of the Writ, the Matter shall be taken to be to the Action, and not to the Writ according to his Conclusion. Plea in Bar, Conclusion *al Brief*.
 H. 6. 24.

If another Court ought to hold Plea, the Court ought not to conclude to the Writ, but to the Jurisdiction. 38 H. 6. 18. To the Jurisdiction.

A Plea that a Plaintiff is an Alien, is a Plea to the Person, or to the Action;
 yet where the Defendant concludes to the Person as he may, he may afterwards demand the View. 3 H. 6. 55. & vide 32 H. 6.

32 H. 6. 23. where he may conclude to Person, or to the Action at his Pleasure.

Lit. fo. 39. says, That there are Six Manner of Men, against whom the Defendant ought to conclude his Plea, with Judgment they ought to be answered, *viz.*

Conclusion, if the Defendant ought to be answered.

1. If he plead, That the Plaintiff is a Villain.
2. That he is outlawed.
3. That he is a Stranger born.
4. That he is attainted in a Premunire.
5. That he is professed in Religion.
6. That he is excommunicated.

In Abatement.

If a Tenant pleads Jointenancy, or other Plea in Abatement, he ought to conclude Judgment of the Writ, and where he pleads in Bar, he ought to conclude Judgment of the Action.

If one pleads an Estoppel and concludes the Writ, it is not good; so he that pleads Estoppel, and relies upon it, ought not to conclude Judgment *si Actio*. 11 Co. 52. a.

Conclusion by *Assint & sic.*

Sometimes a Man must conclude *Assint*, as in Debt upon an Obligation. Defendant pleads, he is a Man unlearn'd, and was read to him to be with Condition; he must conclude, and so this Obligation being single, is not his Deed, or Judgment *si Actio*. But when to a Debt, or Obligation, he pleads Payment and Delivery of the Obligation, he must conclude Judgment *si Actio*. *Plowd.* 343.

Special Matter, where waived, where not.

When the Conclusion of a Plea, *Et sic*, is in the Affirmative, it shall not waive the Special Matter; but where the Conclusion

In the Negative, there regularly the Special Matter is generally waived. *Co. Lit.* 303. 133.

Where Special Matter is pleaded, and the conclusion *Et sic* is to the Point of the Writ of Action, the Special Matter is waived, and a Tender of the General Issue. *Plow.* 66. a.

But where one has Special Matter and pleads and concludes with the General Issue, it gives not the Matter precedent, as in Debt plead unlettered, *Et sic non est factum*, a Special Payment, *Et sic nil debet*; or one to plead that he was Jointenant with Feoffee at the Time of the Feoffment, *Et sic non est factum*. 10 *Ed.* 4. 3. *Ed.* 4. *Plow.* 15. & *fo.* 19. b.

Defendant pleads *Nil detinet* (to an Executor upon Debt for Arrearages of Rent), but concludes not to the Country, but with *hoc status est verificare*. Plaintiff demurs, and Judgment against the Defendant for the ill conclusion of his Plea. 1 *Sand. Rep.* pag. 283. Other Special Rules and Authorities will follow in their proper Places.

Next as to the Replication.

It is to be observed, That the Plaintiff ought not to depart from his Count or Declaration. *Co. Lit.* 303.

When it appears by the Replication, That the Plaintiff hath no Cause of Action, there the Plaintiff shall not have Judgment, tho' the Replication be insufficient in Matter. 8 *Co.* 120.

When the Replication doth neither confess nor avoid, nor traverse the Matter of the Bar, it verse.

Not to depart from the Count.

When it shows the Plaintiff had no Action.

Doth neither confess and avoid, or traverse.

it is naught, and the Defendant may demur to it, and assign this for Cause.

Bar made good by Repl.

Where a Bar is ill in Substance, it may be made good by a Replication; but where the Bar is ill in Circumstance, it may be made good by Replication. 8 Co. 120. 6 H. 7. 10.

Advantage of Demurrer lost.

If the Plaintiff do reply to a Plea in which is not good, by his Replication he has confessed it to be good, and hath lost his Advantage of demurring to it.

Plaintiff replies to inforce his Case.

When the Bar is insufficient in Matter, it amounts to the Confession of the Point of Action: And the Plaintiff replies, and shews the Truth of the Matter to inforce his Case, and in Judgment of Law it is not material, yet the Plaintiff shall have Judgment. 120.

Repl. Must shew how the Condition is broken.

When the Defendant pleads generally, that he hath performed the Condition of an Obligation; the Plaintiff must shew in his Replication, in what the Defendant hath broken the Condition, otherwise it is but idle.

Difference of Condition, Affirmative and Negative.

And *note*, That there is a Difference where the Condition is in the Negative, not to do a Thing, and when in the Affirmative to do as to perform his Office, and to enfeoffe him of all his Land, &c. there he must shew in his Replication what the Office was, and what Lands he had, &c. and that he did not perform it, &c. But to the Negative Condition the Plaintiff need only say, that the Defendant did do it. 1 Leon. 136. Latch. 16. 2 R. 3. fo. 17. Plow. 44.

New Assignment.

When the Plaintiff in Trespass quare & freſſu does not well assign the Place, and

Defendant plead his Freehold, the Replication must make a new Assignment.

The Conclusion of the Replication, if it be the Affirmative, must be *Et hoc paratus verificare*, otherwise if it be merely Negative. *Co. Lit. 303.*

The Defendant pleaded, That no Goods came to his Hands. The Plaintiff replied, That a Silver Bowl came to his Hands. *Quere*, How the Plaintiff ought to conclude to the Count, or with a *Hoc paratus est verificare*. *2 Saund. Rep. 102, 103.*

On Debt upon Bond to perform an Award, Plaintiff mul Award pleaded; the Plaintiff ought to shew the Award, and also the Breach of it in his Replication. *Idem 102, 103, 317.*

And as well in other Cases as in an Award, when a Special Point is pleaded by the Defendant, the Plaintiff ought to shew more in his Replication. *Idem 103.* how such Defect is cured after Verdict. *Idem.*

If the Defendant plead an Award made of three Things, the Defendant may not reply, that it was made of the said Three Things of one other; but he ought to reply, that it was made of Four Things, and traverse the Award made of Three Things only. *207.*

The Plaintiff replies, and shews three distinct Things, to two of which (one being Matter of Fact, and the other of Record) he makes two several Averments, *Et hoc paratus est verificare*, and concludes the Third last, (being Matter of Fact) *Et hoc per inquirat p patriam*. *Quere*, If it be in Replication, or three several Replications,

Conclusion.

Quere, How to conclude.

Plaintiff ought to shew the Award in his Replication.

So when a Special Point is pleaded by the Defendant.

Bar of Three Things. Replication of Four, and Traverse.

Quere, if One Repl. or Three.

tions, and if the Conclusion to the Count shall not extend to the Matter of Record *Idem* 337, 338.

If one good ;
if three, & if
not a Discon-
tinuance.

In this Case if the Defendant demur, *Quod p̄sumptum p̄d, &c.* and the Plaintiff joins Demurrer, *Quod p̄sumptum p̄d, &c.* in the singular Number ; if it be one Replication it will be well enough, but if it be three Replications *Quære* if it be not a Discontinuance. *Idem*.

Three Repl.
and one su-
perfluous.

If there be three Replications, and one of them superfluous, and the other two sufficient, and the Defendant demurs generally, the Plaintiff may have Judgment upon them that are sufficient. *Idem* 338.

Liberty upon
a Replication
to traverse or
rely.

Where an Administrator pleads several Judgments recovered against him, and that they were for just and true Debts. And the Plaintiff replies, that they were obtained by Fraud, he has Liberty to traverse the Special Matter, or to rely on the Fraud generally on his Election. 2 *Saund.* 50.

Entire Repli-
cation bad in
Part.

A Replication being entire, and bad in part is bad all. *Idem* 127.

Repl. reacheth
not one Point
in the Narr'.

If the Defendant plead an entire Plea to *Indebitatus assumpsit* and an *Instimul computasset*, and the Plaintiff makes an entire Replication to the Plea, and the Replication reaches not the *Indebitatus assumpsit*, tho' it does the *Instimul computasset*, it ought to be wholly adjudged against the Plaintiff, altho' 'tis sufficient as to the other. 2 *Saund.* 127.

'Tis against
the Plaintiff.

*De injur' sua
prop'r.*

Where in Trespass the Defendant by his Plea claims Interest in the Place where, the Plaintiff cannot reply, *De injur' sua* *prop'r* *abiq' illi Causa* generally. *Idem* 23.

ere, If he may not with a Special Traverse.
Co. 67. because it referreth to all the Plea in
ar. See more of this in Trespass.

Sometimes a faulty Bar is made good by a Faulty Bar
plication, as if I plead in Bar, Grant of a made good
everfion, and omit Attornment; if the Plain- by the Repli-
ff reply, and confels and avoid the Grant by cation.
pecial Matter, then is the Bar good. 11 H. 7. 24.

In Trespass a Man pleads Arbitrement, and That which
oth not shew the Place where Submiffion was, was ill con-
hich is not good; but if the Plaintiff reply fessed.
d faith, that he discharged the Arbitrators
ore the Award, now it is good, for that
hich was ill is now confessed: 10 H. 7. 24.
20 H. 7. 12.

In Debt, if the Defendant plead a Release Defect of
the Plaintiff, and doth not shew where it Place made
s made, and the Plaintiff replies and pleads good.
his Deed, the Plea of the Defendant is
de good by this Replication. *Br. Tit. Re-
ader 38.*

Defendant says, The Plaintiff made an Af. Day made
le in the Court before the Steward, &c. good.
intiff faith of his own Wrong without such
use; now tho' the Defendant hath not
wed what Day the Court was, yet by the
plication 'tis made good, for now the Day
ot material. 21 H. 2. 30.

If a double Plea be pleaded, and the Plain-
replies, and takes Issue of one Matter, and
is found, he cannot after plead in Arrest
Judgment, for by the Replication it is made
od. 18 Ed. 4. 17.

See more of Departure in Pleading. *Mod.*
pag. 43, 44, 227, 289.

Next

Next as to the Rejoinder.

Not to depart
from the Plea.

IT is to be observed, That if the Defendant do therein depart from his Plea pleaded in Bar, the Rejoinder is not good. The Defendant is not to rejoin in such Words as are contained in the Replication or Plea, for this is to begin a new Discourse of his own, and not to answer the Plaintiff.

When the Defendant in Rejoinder pleads new Matter, he may conclude, *Et hoc per raturus est verificare*, for he ought to give the Plaintiff Liberty to come in with a Surrejoinder and answer to it. *1 Ent. 122.*

Judgment for
Departure.

In *Saund. 2 Rep. pag. 84.* The Defendant pleaded *Non Damnificatus* generally; which the Plaintiff replied, and shewed how he was damnified. The Defendant rejoined That the *Damnification* fuit de son *temps* *Demefne*. Plaintiff demurs, and the Rejoinder was adjudged to be a Departure from the Plea in Bar. And altho' the Counsel for the Defendant urged, that what the Plaintiff shewed for Damage was no *Damnification* because, &c. yet the Court gave Judgment upon the Departure.

So *idem* 189, 190. In *Debt* upon Bond to perform an Award, The Defendant pleaded *Nul Arbitrament*, and upon the Plaintiff shewing it, the Plaintiff rejoined, that *Arbitrament* was not tendred according to the Condition of the Bond; and it was adjudged a Departure from the Plea in Bar.

Matter goes
before the Bar.

And it is said, That where the Defendant in *Trespafs*, &c. fortifies his Bar, and there

no other but pursuant to the Bar, and goes before the Bar in Conveyance of his Title, this is no Departure: But where the Bar is before the Matter shewn in his Rejoinder, this is a Departure. See 21 Edw. 4. 12. *Vide Plow. Com. 105. b. Co. Lit. 304. a.* *Et è converso.*

Lease pleaded at Common Law in Bar, and upon the Statute in the Rejoinder is a Departure. *Dyer 10.* And *Dyer 102, 103.* the Rejoinder is said to be a Departure, because it did not go with the Bar, nor inforce it.

Yet it is said, that in many Cases, if new Matter be awarded in the Replication, if the Defendant alledges a new Answer in the Rejoinder, it is no Departure. *Vide ut supra.*

The Condition of an Obligation was, That the Defendant should stand to the Award of *J. S.* between the Defendant and *J. D.*'s Tenants. The Defendant pleads *Null fecit Arbitrium*. The Plaintiff replies, That the Award was made between the Defendant and Tenants of *J. S.* and names them. Defendant rejoins, that they were not Tenants; this was said to be no Departure, but good, and the Reason seems to be, for that the Plaintiff alledged Matter which gave Occasion for such Plea. 39 H. 6. 16. 21 H. 6. 57. 5 H. 7. 19.

The Rules are the same *è converso* as to the Surrejoinder.

Bars.

These Things being premised in general, (tho' there are many more Things in particular, which shall be spoke to afterwards)

S

we

General Rules.

we will next proceed to the several Pleadings, which I said before should be reduced to the most usual Head, as *Cafe, Covenant, Debt, Detinue, Quare Impedit, Trespass, Trover, Waste.*

Pleas to Actions on the Cafe.

And as to the Actions of the Cafe, they are generally either concerning

{ Words,
or
{ Deeds.

Plea to Actions of Slanders.

To an Action of Slander brought upon Words, the Defendant may plead the General Issue, Not guilty: Or if the Plaintiff sue only upon some of the Words, when all together are not actionable; the Defendant may set them forth at large as he spake them, and traverse or justify, or plead Not guilty to the rest of the Words, as the Cafe requires.

Justification of Slander.

Or else the Defendant, if he have good Cause, may justify the Words.

Of all which, you have several Pleading and Justifications (as follow) in this Treatise.

Cafe.

Bar al Slander.

The Defendant pleads the Statute of Limitations at large, *viz.*

¶ *A* Cced non, Quia die qd p queram Adam Alcum, (Ec.) [reciting the Act over unto] He dcd Acciones sup Casum p verbis infra unum annu pr po finem pdict tunc pferit Sessio Parliament vel infra duos annos p'or po

erba locuta & non postea prout p eun-
 em Atum inter al plenius liquet &
 apparet Et idem A. ulterius dic quod
 dia' acco vers' pdia' A. in forma pdia'
 polat est Actio super Casum p verbis
 scandalosis Quodq causa Actionis ill
 ererit ante decimum diem Maii
 Anno regni dicti Domini Regis nunc &
 domine Marie nuper Regine Anglie,
 quinto & non postea Qdq non solum
 us annus & amplius pror' post finem
 dia' Sessioni Parliamenti pdia' verum
 iam duo anni & amplius pror' post
 dia' causam actionis pdia' fuer' & exi-
 ant excursi & expirat anteqm Actio pd
 imo incepta fuit (Anglice was commen-
) versus p'fat' A. Et hoc, (Ec.) Un-
 (Ec.)

Precludi non Quia dic quod bene & ve-
 n est qd acco pdia' per ipsum D. ver-
 s p'fat' A. in forma pdia' plat est Acco
 per Casum p verbis scandalosis Sed
 em D. ulterius dic qd acco pdia' per
 D. vers' p'fat' A. in forma pdia' p-
 imo incepta fuit 29 die Aprilis
 Anno regni Dni Regis nunc septimo
 q causa acco ill accrebit post pdia'
 imum diem Maii Anno regni dicti
 d Regis nunc & Dne Marie nuper
 d Angl, Ec. quinto ac infra duos
 hos pror' ante pdia' acco per ipsum
 in forma pdia' p'olat Et hoc, (Ec.)
 Ec. (Ec.)

Et pdia' A. dic qd causa acco ill non
 erit post pdia' decimum diem Maii
 Anno regni dicti Domini Regis nunc

Repl.

Rejoinder
and Issue.

& Domine Marie nuper Regine Ang
 &c. quinto ac infra duos annos pro
 ante p̄dica' accord p̄ ipm̄ D. in forma p̄
 p̄olat modo & forma put p̄dica' D. sup
 rius p̄litando allegavit Et de hoc po
 se super p̄riam Et p̄dica' D. filit, (Et
 Ideo, &c.)

Vide ante General Bar.

Defendant excuses himself of other Words, and
 traverseth the Words in the Declaration.

Et modo ad hunc diem scit diem D
 neris prox' post Cr̄m Sed Cr̄m
 isto eodm̄ Termino usq; quem diem p̄dica'
 J. H. huit licenciam ad villam p̄dica'
 interloquendi & tunc ad respondendū,
 coram Dño Rege apud Westm̄ vendit
 p̄dica' C. B. per Attor̄m suum p̄dica' q
 p̄dica' J. H. p̄ S. H. Attor̄m suum
 idem J. defend v̄m & injur quando
 & dicit qđ p̄dica' C. accionem p̄dica' in
 versus eum here seu manutenere n
 debet quia dicit qđ p̄dica' J. p̄s decim
 die Martii Anno sexto supradicto ap
 p̄dica' dixit de p̄lat C. hec Anglicana
 verba sequen' videt, That T. B. w
 thought by some that he burned a Barn, Al
 hoc qđ p̄dica' J. dixit de p̄lat C. p̄dica'
 Anglicana verba in Pare p̄dica' spec
 cat videt, That T. B. (p̄dica' C. B. ma
 quē inuendo) did burn my Barn (h
 um p̄dica' J. H. modo Def. frumento
 pletum tunc existē inuendo) with
 own Hands (manus pp̄dica' C. B.
 nuendo) and no Man but he (ip̄s
 C. B.

Case.

T. B. modo quer iterum innuendo) mo-
do & forma put idem C. superius vsus
um queritur Et hoc parat est verificare
inde petit iudicium si pdia' C. accionem
nam pdia' inde versus cum here seu
manuteneat debeat, &c.

Rep.

Et pdia' C. B. dicit qd ipd p aliqua
pdia' J. It. superius pfitando allegat
b accione sua pdia' versus ipsum J.
end pcludi non debet quia ut prius di-
ct qd idem J. dixit de pstat C. pdia'
Anglicana verba in Rare pdia' supe-
ius spec' vide't, That T. B. (dictum)

Innuendo.

T. B. modo Quer innuendo) did burn
y Barn (horreum dicti J. It. modo Def.
umento impletum existend innuendo)
th his own Hands (manus xpd pdia'
B. innuendo) and no Man but he (ip-
m C. B. modo Quer iterum innuen-
do) modo & forma put idem C. supe-
ius versus cum queritur Et hoc pet
inquiratur p priam Et pdia' J. silit,
(c.) Jo ved inde Jur coram Dno Re-
apud Westm die Vltine ppor' post
es Septimas Sed Trinitat Et qui
(c.) Ad Accogn, (c.) Quia tam,
(c.) Idem dies dat est partibus pdia'
m, (c.)

Issue.

T pdia' C. p J. G. Attorn suum
L ved & defend vum & injur quando,
Et die qd pdia' A. accion suam pd
de vers eum here non debet quia die
ipd pd tempore quo supponitur die-
nem relacionem publicacon & propa-
con pdia' Anglicanor verbor in
S 3 Rare

Case.

Aliter in Corn-
muni Banco.

Case.

Narr p̄d superius specificat fieri dixit
retulit publicabit & p̄palabit de eodem
N. hec Anglicana verba sequen̄ videt̄
[Thou art like a Thief in Newgate] Absq̄
hoc qđ idem C. dixit retulit publicabit
& p̄palabit de p̄d N. p̄d Anglicana
in Narr ip̄ius N. superius specificat
videt̄, [Thou art a Thief, and I will prove
thee one] p̄out p̄d N. p̄ breve & Narr
sua p̄d superius suppon̄ Et hoc p̄
est verificare unde p̄t Iudic si p̄dic
Accord suam p̄d vers̄ eum here debet
Ec.

Rep̄.

Et p̄d N. p̄cludi non, Ec. quia die
p̄d C. die & anno supradic̄ in Narr
p̄d superius spec̄ dixit retulit pub
cabit & p̄palabit de eodem N. p̄
verba Angl̄ in Narr p̄d sup̄ius
videt̄, Thou (N. eund̄ N. innuend̄) art
Thief, and I (seip̄m C. innuendo)
prove thee (eundem N. iterum innuendo)
one, p̄out idem N. superius vers̄
queritur Et hoc p̄t qđ inquiratur
p̄riam Et p̄d C. s̄lit Ideo p̄cept̄
Dic, (Ec.)

Issue.

Vide Pl. Gen. 31, 35. Read's Dec. 114.
Cl. Aff. 114, 115. 1 Bro. 21, 46. 2 Bro.
Rob. 94. 1 Mod. Inir. 45. Clift. 118.

Note, The Office of an Innuendo is
to mark out the Person that was named before
but it cannot make a Person certain, who
was not certain before: It cannot alter the Meaning
in the Sense of the Words. 4 Co. 17. b.

Defendant excuses himself of other Words,
and traverses the Words in the Declara-
tion.

Et p̄d̄ C. B. dic̄ qđ p̄d̄ Vicecomes
actionem suam p̄d̄ vsus enim ma-
ntenere non debet quia p̄testando quod
p̄d̄ & Narratio minus sufficient in lege
existunt p̄testando etiam quod consue-
tum est qđ quilibet Mercator indigena
qui transportat vinum haleces seu ali-
qua alia victualia de villa Caleis usq̄
Regnum Anglie ac etiam de Regno
Anglie usq̄ Villam C. p̄ talibus mer-
chandizis sic transport non solvet ali-
quam custumam Dño Regi p̄ p̄lito die
qđ diu ante p̄d̄ vicesimum p̄m̄ diem
Jan And vicesim̄ sexto supradict̄ idem
C. B. extitit & adhuc existit scrutator
Dñi Regis portus Ville Gippewici in
Com̄ S. & diu cartallozum & por-
tum (voc̄ Creeks and Havens) eidem por-
tui pertind̄ Et ulterius idem C. dicit qđ
quidam W. S. & P. C. mercatores in-
digene die, (Ec.) Anno, (Ec.) in qua-
dam Nave transportaverunt a villa Ca-
leis usq̄ in Regnū Anglie unū doliū
vini (voc̄ a Hoghead) & quatuor barel-
las albozum halecium & p̄d̄ W. ja-
cuit super terram p̄d̄ doliū vini
apud S. in Com̄ E. & p̄d̄ P. jacuit
super terram p̄d̄ quatuor barellas al-
bozum halecium apud C. in eod̄ Com̄
E. que quidm̄ duo loca sunt duo Cartall
(voc̄ Creeks) spectand̄ & p̄tind̄ portui p̄d̄
ville

Aliter,
To an Ac-
tion De Scan-
dalo Magnar.

Protestando.

Case.

villę Gippewici Et p̄dia' C. B. veniens
ad p̄dia' portum C. sciscitabatur de p̄lat
N. quare jacuit super terram p̄dia' qua-
tuor barellas alborū hālecium customa
Dñi Regis inde non soluta & quidam
J. H. tunc serviens p̄dia' C. B. ve-
niens ad S. p̄dia' sciscitabatur de p̄lat
W. quare jacuit super terram p̄dia' do-
liū vini customa Dñi Regis inde non
soluta Et p̄dia' N. & W. responderunt
& dixerunt qđ p̄dia' Vicecomes Depu-
tatus p̄dia' ville Calcis eis p̄cepit ita
facere & qđ nullus customarius contra
rotulatoz nec scrutatoz Dñi Regis cum
eis intromitteret super quozum quiddā
N. & W. verbis idem C. B. dixit qđ
ipse p̄bore vellet eadem verba ut per-
ditiones eozundem N. & W. Abloz hoc
qđ p̄dia' C. B. dixit retulit vel publice
p̄opalabit (I will prove that, &c.) p̄out
p̄dia' Vicecomes p̄ hęc & Pare sua p̄
superius suppon Et hoc paratus est ve-
rificare Unde petit iudicium si p̄dia'
Die actionem suam p̄dia' versus eum
here seu manutenere debeat, &c.

Traverse.

Repl.
Issue sur Tra-
verse.

Et p̄dia' Die die qđ ipse, (&c.) p̄cludi
non, (&c.) quia die qđ p̄dia' C. B. dixit
retulit publicabit & p̄opalabit (I will
prove that my Lord, &c.) p̄out idem Die
p̄ hęc & Pare superius suppon Et hoc
petit qđ inquiretur p̄ p̄riand Et p̄dia'
C. B. alie Jo, (&c.)

N. B.

Justification
of Words
spoken of a
Sheriff

Actio non quia protestando quod
idem N. non fuit talis honorum
sive fame & gestur ac honest' conversa-
tional' p'dict' N. p' breve & Narr sua p'di-
catus supponit pro plito idem C. die
bene & verum est qd p'dict' Dñs
nunc p' Lras suas paten sub mag-
sigillo suo Angl p'dict' N. in Offic und
Offic ipsius Dñi Regis ad Pacem in
C. p'dict' conservand necnon ad di-
scrimin' felon' transgr' & al' malefacta in
eodem Comd audiend & terminand con-
venit & assignavit Ac ulterius idem
N. fieri p' consiles Lras suas patent
C. p'dict' eidem N. salvo custodiend
& commississet eundemqz N. nup die
in p'dict' ordinasset Ac p'dict' N. tam in Of-
ficio suo Comd p'dict' qm in Offic suo Ju-
sticie pacis p'dict' quccunqz de jure & secundu
Offic p'dict' respective eidem N. p-
cessissent & fuissent fiend & exequend
eodem super Sacro sancto Dei Evangel
facere & performare Sacrm suu p'resti-
tisse prout idem N. p' breve & Narr sua
superius allegavit Sed idem C.
terius die qd postqum p'dict' N. tam in
Offic suo Comd p'dict' qm in Offic
Justicie pacis p'dict' quccunqz de jure
secundum debet Officioru suoru p'dict'
relative eidem N. p'tinuisset & fuisset
fiend & exequend eadem super Sacro-
sancto Dei Evangel facere & performare
eodem suu sic ut p'fertur p'stitisset scilicet
tertio die Novemb Anno regni dñi
Regis

Case.

Regis nunc septimo idem A. Die
 pdict' tunc existend' dimisit officium su-
 vic' ejusdem Com' cuidam f. G.
 p 1001. legis monet Angl' contra
 mam & essend' Sacri sui pd' in ea pa-
 pstit Et idem C. ulterius sicut die
 postq'm pdict' A. t'm in Offic' suo
 Com' pred' q'm in Offic' suo Justie pa-
 pred' quocunq' de jure & scdm debet
 sic suorum pred' respective eidem A. p-
 tinuisset & fuisset fiend' & erequend' su-
 Sacrosanct' Die Evangel' facere &
 formare sacrm suum pred' sic ut pfer-
 pstitisset scit Termino scd Hillarii
 no regni dicti Dñi R's nunc septimo
 pradicto ad psecuton' ipsius C. quod
 h' emanabit e Cur dñi Regis cor-
 ipso dño Rege (eadem Cur apud W-
 in Com' Middel' tunc existend') vers' ter-
 cuiusdam J. R. Armig' tunc Die C-
 f. pred' direct' retornabil' coram dño
 Rege apud Westm' die Mercurii p-
 post Quinden' Pasche tunc pr' seq-
 Quod quidm' h' postea & ante re-
 ejusdem scit primo die Marci
 septimo supradicto apud H. in Com-
 pred' pstat A. tunc Die ejusdem Com-
 sic ut pferatur existend' ad erequend' deli-
 fuit Super quo postea scit 13 die
 cii anno septimo supradicto idem
 tunc Die Com' C. pred' pferatur cri-
 apud H. pd' in lucrum & pscud' de
 J. R. 51. p differendo execucon' su-
 pred' (versus terras & tēta pred' J-
 e Cur dicti dñi Regis coram ipso
 apud Westm' in forma pred' eman-

Bar A. deliberat recepit quas quidem
 I. de p̄fat J. R. in forma p̄dē & ex
 causa p̄dē A. hīc & recepit idem A. ad
 hunc & ibi in manibus suis detinuit &
 adhuc detinet contra formam & effectum
 sac̄d sui p̄dē in ea parte p̄stitit p̄ quod
 dem C. die & anno supradictis in Pare
 p̄dē superius spec̄ apud H. p̄dē dixit
 & p̄fat A. p̄dē Anglicana verba in
 Parr p̄dē menconat̄ videt̄ A. B. (eun-
 dem A. B. modo quer̄ innuendo) is a
 injured Man, and a Corrupter of Justice,
 and I (eundem C. D. modo innuendo)
 will prove him (p̄dē A. modo quer̄ innu-
 endo) to be such, put ei bene licuit Et
 or, (Ec.) Unde, (Ec.)
 recepit de injur̄ sua pp̄d, (Ec.) See after
 such a Replication. *Vide Bro. Red. 97.*

B. versus A.

A Ccon non) Quia dic̄ qd̄ R. super Justification
 Trent est & p̄dco tempore quo of exhibiting
 (Ec.) necnon a tempore cujus contrar a Petition to
 memoria hominū nōn existit fuit & ad the Justices
 que est antiquus Burgus incorporat̄ p of the Peace.
 ōen Majoris Alderman & Burgens
 Burgi de R. super Trent in Com' Post
 p̄dē B. tempore exhibitōd p̄dicta
 Bille & diu ante apud R. p̄dicta hitabit
 ibi continue concinuabit de mala &
 scelerata gestur̄ cōit frequentans taber-
 nas & domos cervicie vivens ociose &
 une fuit cōis ebrius ac calumpnians &
 contentiosus utens malis & sceleratis
 verbis tam erga generosos bone estima-
 tionis

Case.

conis & gradus quā etiam Magistratus
 & alios inferiores Officiarios demon-
 strans se contemnere omnem authori-
 tem & verisimilis erat p̄bare periculosa
 & perniciosam personam ad Rempubli-
 cam si animus ejus maliciosus & ar-
 gans p̄ aliquem bonum cursum Regi
 non reprimetur Rōne cujus p̄dicta Ma-
 jor Alderman & Burgens de N. p̄dicta
 (quorū p̄dicta A. un Burgens Bur-
 gis p̄dicta tunc existerat) non habentes al-
 quam authoritatem ad corrigendū
 puniendū humōi malefactoris p̄dicta
 p̄dicto sexto die Aprilis Anno octavo sup̄-
 p̄dicto apud Will. Notū p̄dicta exhibuit &
 liberavit p̄fate C. D. Armig C. f. A-
 mig & al Justic dicti dñi Regis ad p̄-
 cem in Com̄ Notū p̄dicta conservandū
 signū petitionem p̄dicta testificandū male-
 furam p̄dicta B. quam peticonū Ma-
 jor Alderman & Burgens de N. sup̄-
 Trent quorū p̄dicta A. un Burgens
 ejusdem Burgi tunc existerat p̄dicto
 mo die Aprilis Anno octavo sup̄-
 vere & iuste scribi fecer & peticoni
 manus suas p̄p̄d subscripser necne
 Coe Sigillum p̄dictorū Majoris Alder-
 man & Burgens Burgi de N. sup̄-
 Trent p̄dicta in Com̄ N. p̄dicta eidem p̄-
 ticoni apposuer in qua quidem petico-
 p̄dicta Major Alderman & Burgens
 N. super Trent p̄dicta apud N. p̄dicta
 millime obsecrabantur qđ bene placeret
 eisdem Justic ad evocandū ipm B. &
 ram ipis & aut compellandū ipm B. &
 inveniendū bonam securitatem p̄p̄o ejus
 hon

ona gestur adtunc deinceps vel aliter
capienti ad bonum cursum sedm pru-
ent suas p pbencon ulterioꝝ pictoꝝ &
ampn que crescerent si ipse idem B.
missus esset vivere sicut tunc vixit, put
s bene licuit Et hoc, (Fc.) Unde, (Fc.)

Quer Demurr & Def. join in Demur-
er, Et judic versus Quer.

Vide Rob. Ent. 74.

de 4 Co. 140. No Action lies against Peti-
tioners, when they pursue the ordinary
Course of Justice.

C. H. versus C. L.

A Etod non Quia prestando qd pd
C. L. non vere fideliter juste seu
corrupte se gessit fuit seu gubernabit
Officiis suo pdict' p plito idem C. H.
qđ pdict' C. L. per sex annos jam
elaps & amplius fuit & adhuc exi-
Legum Doctor ac Episc L. p tem-
re existend Vicar in spiritualibus ge-
lis & Officialis principat per totam
dioces L. litem constitut videlt apud
in Com L. pdict' ac infra Dioces L.
qđ pdict' J. J. p totum idem tempus
interrogat fuit ipsius C. L. videlt apud
pdict' Et pdict' J. P. S. L. C. L. &
M. fuer Ministri & Subofficiarii
pdict' Official per totum idem tempus
ad S. pdict' qđ ipse idem C. H. p to-
idem temp' fuit & adhuc existit Con-
lar ad Regem ac in Legib' huj' Regni
erudit Et pdict' C. H. ulterioꝝ die qđ
ipse

Def. justifies
exhibiting a
Petition to
the Commit-
tee for Grie-
vances.

Case.

ipse idem E. R. sic Conciliat ad Legem
 ac in legibus erudit existens ante publi-
 cationem scripti p̄dicti scilicet primo die
 Anno Dñi 1663 supradicto apud S.
 Com p̄dicti deliberavit Opinionem suam
 diversis Clientibus suis adinde requirit
 existens & retent Quod nullus Ecclesiasticus
 Officiarius. (Ec.) and so sets forth
 Opinion with the Things alledged against
 him, and also his Reasons of doing them; and
 in what Manner the Defendant was guilty
 them) p̄ qđ idem E. R. postea scilicet ult-
 mo die Nov. Anno Rñi dec̄i Dñi Regni
 nunc 18. supradicto apud Westm p̄dicti
 scriptum p̄dicti in forma Petitionis p̄dicti
 in Parr p̄dicti specificat scribi & ingre-
 sari fecit Ac eandem Petitionem sic
 p̄fertur continens materiam p̄dicti Co-
 ventui (Anglice Committee) adtunc
 ibi in Parlamento assemblato ad
 end & examinand gravamina huius
 Rñi Ange exhibuit & deliberavit
 quidam Conventus adtunc & ibi ple-
 nitudine potestatis & Auctoritatis huius
 gravamina audiend & examinand
 quem quidam Conventum idem E. R.
 postea scilicet eisdem die & anno apud
 p̄dicti summonitus fuit ad comparend &
 respondend de & super materiis p̄dicti
 p̄dicti Petitionis contentis coram eodem Co-
 ventu Ac idem E. R. ulterius die
 ipse p̄ meliorem manifestacionem gravaminum
 in Petitione p̄dicti contentis postea scilicet
 primo die Novemb̄ anno 18. supradicto
 apud W. p̄dicti eandem Petitionem
 p̄p̄rii causavit ac diversis Dñi Regni

et iuris existentibus membris ejusdem
 conventus adtunc et ibi delibavit secundum
 in hac parte per alios usitat et per
 membra ejusdem conventus approbat
 est eadem impressio publicatio et
 versio scripti unde idem C. I. superius
 modo queritur Cum hoc quod idem
 verificare vult quod predicta C. I. et
 ministri et subofficiarii predicti sunt cul-
 pabiles de Articulis supradictis modo et
 a put in ipsis Articulis affirmate
 hoc, (Et.) Unde, Et.

Averment.

Quer' moratur in Lege et Def. jung
 in morac.

THIS Action was brought against the Defendant, for Printing and Publishing a scandalous Libel of the Plaintiff in hac forma: *Quer' moratur in Lege Et Def. jung'.*

To the Honourable the Committee of Parliament for Grievances, the humble Petition of Edward King of Grays-Inn in the County of Middlesex Esquire, sheweth, &c. (setting forth the petition ad dampnum 2000 l.) to which the Defendant pleaded as before, and the Plaintiff demurred, &c.

It was agreed, That the Exhibiting the petition to the Committee was legal, and that the action lay, altho' the Matter in the Petition was false and scandalous, because it was presented in a Course of Justice, and before a Court that had Power to examine whether it was true or not.

And as to the Charge of Printing, Publishing and Dispersing it, the Court held, That according to the Order and Course of Proceedings in Parliament, to print and deliver Copies, of

Case.

of which the Court ought to take judicial Notice.

3. And as to an Objection, of delivering Copies to several Persons not Members of the Committee (as in Truth it was); It was answered, That the Plaintiff might have replied and shewn that Matter, but by his Demurrer he had admitted the Publication was only by Delivery of them to Members of the Committee, as the Defendant had alledged in his Plea: And Judgment for the Defendant. *1 Saund. Rep. pag. 124, & 130, 131, 132,*

Note, It is said to be a good Justification (altho' the Words were false), that he was a Counsellor at Law, retained in an Issue between the Plaintiff and J. S. And he said the Words in Evidence for his Client, if they were directly material to the Point of the Issue. *Vide Mo. 428. & Hob. 348.* That the Justification is good, altho' they were not material to the Issue; especially by Consequent and Mitigation of Damages.

And Mich, 3 Jacobi, in *Brook and Attridge*, adjudged, That if in false Imprisonment the Defendant pleads in Bar, that he was Mayor of London, and imprisoned the Plaintiff until he found Sureties for his good Behaviour, being a Man of ill Fame and Carriage; to which the Plaintiff replies, *De injuria non absque tibi Causa, &c.* And a Counsellor at Law retained for the Defendant to give the Information of his Client, says in Evidence That the Plaintiff was of ill Behaviour, and had committed Felony. Upon an Action for these Words, he may well justify the Speech.

them for the Matter aforesaid, (altho' they
false) and altho' they tended not precisely
Proof of the Issue, for they tend to purge
Magistrate, and the Course of Justice, and
material to mitigate Damages, and were
without Malice. *Vide 2 Cro. 90.*

¶ *pdia' R. S. & A. (Ec.) dic' quod* Husband and
Alion non. (Ec.) quia dic' qd ante Wife justify,
at tempus quo dicōd & ppalacon for thar the
Anglicanoꝝ verboꝝ in Parr p̄d Plaintiff mur-
rificat fieri supponitur videlt 30 die dered his
ptembꝝ Anno 8. supradicto p̄d J. S. Wife.
Janam apud W. pdia' murdavit
interfecit Unde pdia' A. postea scit
primo die Augusti Anno, (Ec.)
adicto in Parr pdia' silit specificat
id W. pdia' dixit propalabit affir-
bit proclamabit & publicabit de p̄fat
S. in p̄sentia & auditu pdicoꝝ sub-
qꝝ dicti Dñi Regis nunc pdia' an-
ana verba in Narratione supius spe-
cat videlt Thou (pdia' J. S. modo
innuendo) art a murdering Villain, for
(pdia' J. S. iterum innuendo) hast
thered thy Wife (nuper Uxoꝝem pdia'
S. tunc defuncta' silit innuendo) put
ene licuit Et hoc, (Ec.) Unde, (Ec.)
pdia' J. S. dic' quod ip̄d p aliqua,
cludi non debet quia dic' qd pdia'
de injur sua propꝝ & abscꝝ Causa p
S. & A. supius allegat dixit de
em J. S. pdia' Anglican verba in
er pdia' supius specificat videlt Thou
ia' J. S. modo quer' innuendo) art a
thering Villain, for thou (pdia' J. ite-

Repl.
De injur' sue
propꝝ.

T

rum

Case.

rum innuendo) hast murdered thy Wife
(p̄dix' Janam nup Hr' p̄dix' J. S.
tunc defunct' filit innuend) put p̄dix' J.
supius vers' eosdem R. & A. queritur
Et hoc p̄t qđ inquirat p̄ patriam
p̄dix' R. & A. filit, (Ec.) Vide Hern. 140
Pl. Gen. 38.

Issue.

R. versas S.

Aliter.

For that the
Plaintiff kil-
led a Man by
unwholsome
Medicines.

A Et con non) quia protestando qđ p̄
R. non est tam bonor' nois fam
condicōn conversacōn vite & gestur' qđ
idem R. p̄ Parr' p̄dix' supius suppon
plito idem S. die qđ ante dicōn & p̄
palacōn sepat verbor' scandalosorum p̄
in Parr' p̄dix' supius spec scilt 2 die
Januarii Anno Regni Dñi Regis num
7. supradicto apud A. p̄dix' in Com
quidam T. B. de quodam morbo vocat
Small-Pox languebat & labozabat eodem
que T. B. de morbo p̄d sic ut p̄ferte lan-
guen & labozan eodem R. eisdem
& anno apud A. p̄dix' medicament
eidem T. B. administrare sup se suscep
(eodem R. ad medicinam p̄paratam
mie idon seu licentiar' existē) Et a
tunc & ibm quoddam medicament p̄
gans eidem T. B. inartificialiter ad-
ministravit Rone' cujus idem T. B.
protinus postea scilt 4 die Janua
Anno 7. supradicto apud A. p̄dix'
Com p̄dix' interiit Per quod idem
postea scilt p̄dix' primo die Feb' An
7. supradicto apud A. p̄dix' in Com
dixit de eodem R. verba Anglicana
Parr' ipsius R. supius primo spec

It (he killed a Man with Physick) Ac po-
 ra scit eisdem die & anno apud A. p.
 Com pda' hens Colloquium de di-
 ctis subdit Dñi Regis nunc de eodem
 & pda' C. B. sic octis existē ex
 ista pda' aliter dixit de eodem R.
 dia Anglicana verba in Parr ip-
 s. supius uls menconat videt (he
 killed a Man) prout ei bene licuit Et hoc,
 (Ec.) Vide Thomps. fol. 69.
 Mod. Inter. 135.

Modo ad hunc diem, (Ec.) Et idem
 J. B. defendi vim & injur quando,
 Et die qd pda' J. C. action suam
 inde vers eum here seu manute-
 non debet quia die qd diu ante pda'
 tempora quibus verba pda' in
 pda' specificat p ipm J. B. dici
 copalari supponuntur scit primo die
 Anno Regni Dñi Regis nunc 20
 adito pda' J. C. tres Uncias Ar-
 (Anglice Silver Plate) de bonis &
 his Guardiani Socioꝝ & Schola-
 Collegii vocat Wadham College in
 demia & Civitat Oxon in Com
 dem Civitatis apud Civit Oxon
 in Com ejusdem Civit infra Col-
 m pda' inveni felonice & ut fela
 Regis furat fuit cepit & asporta-
 per quod idem J. B. postea scit
 20 die Octobris Anno Rñi Dñi
 nunc 20. apud London pda' in Pa-
 & Warda pda' in plene & auditu
 torum dia' Dñi Regis nunc fidel
 adtunc & ihm plem existē & au-
 T 2 diem

Plea in Bar,
 and justifica-
 tion to an
 Action of
 Words, for
 charging a
 Man with
 Felony. Trin.
 20 C. 3. R.
 Ro. 902.

Case.

diem dixit asseruit & alta voce publi-
 cit & ppalavit eidem J. C. & de eodem
 J. C. verba anglicana in Pare p
 spec videt, Look, there is a young thie
 Rogue, (ipm J. C. innuendo) didst
 see such a thievish Rogue, he (pdia' J.
 iterum innuendo) hath stolen Two hund
 Pounds worth of Plate out of Wadham
 lege (hospitium vocat Wadham College
 Academia Oxoniensi innuendo) Et
 stea scit 21 die Octobris Anno sup
 dicto apud L. pdia' in Paroch & Wa
 pdia' idem J. B. sicut dixit asseruit
 alta voce publicabit & ppalavit ei
 J. C. & de eodem J. C. pdia' alia
 glicana verba in Pare pdia' spec
 videt, didst ever see such a thievish Ro
 (pdia' J. C. innuendo) he (pdia' J.
 iterum innuendo) stole Two hund
 Pounds worth of Plate out of Wadham
 lege (hospitium vocat Wadham College in
 demia Oxoniensi innuendo) put
 causa pdia' bene licuit Et hoc para
 verificare Unde per Judicium si
 J. C. accon suam pdia' vers ed
 seu manutenere debeat, &c.

Repl.
 De injur' sua
 propr'.

Et pdia' J. C. dicit qd ipse p
 p pdia' J. B. supius plitando al
 ab Accone sua pdia' inde versus
 J. B. hend precludi non debet
 die qd pdia' J. B. de injuria sua
 absqz tali causa p ipm J. B. su
 plitando allegat eodem 20 die
 Anno Rni dec Dni Regis nunc 2
 pradia' apud L. pdia' in Paro
 Warda pdia' dixit asseruit & alta

publicabit & p[ro]p[ri]alabit de p[re]fat J. C. p[er]
 anglica verba in p[re]fat p[re]d[ic]ta sup[er]ius
 modo specificat videt[ur], Look, (Ec.) Ne
 am postea scit p[re]d[ic]ta 21 die Octob An-
 20. sup[er]radia apud L. p[re]d[ic]ta in p[ar]och
 Warda p[re]d[ic]ta idem J. B. sicut dixit
 ruit & alta voce publicabit & p[ro]p[ri]-
 it de eodem J. C. al p[re]d[ic]ta anglica-
 b[er]ba in p[re]fat p[re]d[ic]ta sup[er]ius ult spec
 est, didst ever see, (Ec.) modo & forma
 idem J. C. sup[er]ius inde versus eum
 erabit Et hoc p[er] q[uo]d inquirat[ur] p[er] p[re]-
 am Et p[re]d[ic]ta J. B. inde sicut, Ec.
 eo ven[ire] inde Jur coram D[omi]no Rege
 Westm die Sabti p[ri]or post quin-
 Pasch Et qui nec, (Ec.) ad recogn[oscere],
 Quia tam, (Ec.) idem dies dat est
 tibus p[re]d[ic]ta i[n] m, Ec.

Note, Verdict for the Plaintiff, that the
 defendant de injur sua p[ro]p[ri]e spoke both the
 first and second Words: Upon p[re]d[ic]ta p[re]d[ic]ta in
 50 l. Damages. And afterwards Savin-
 moved in Arrest of Judgment for Mis-
 because the Speaking of the Words at
 was confessed by the Defendant in his
 justification; and the Point in Issue is, whe-
 ther the Plaintiff committed the Felony al-
 leged or not, which was triable, and ought
 to be tried in the County of Oxford, and cited
 Eliz. 261. sur accou[nt] pur slander de
 injur, and Mod. Rep. 410. But the Que-
 stion was upon the New Statute 16 & 17 C. 2.
 8. by which it is enacted, That no Judg-
 ment shall be arrested or reversed, for that
 there was no right Venue, so as the Cause

Case.

were tried by a Jury of the proper Court or Place where the Action is laid. And notwithstanding the Counsels Argument, Opinion of one Judge to the contrary, Judgment was given for the Plaintiff upon the Motion, for that the Statute was plain, the Issue was properly tried in the Court where it was laid. *Vide 1 Saund. 246, 247. Vide Bro. Red. 99. 1 Mod. Intr. 44, 47. Ass. 94.*

Def. justifies,
for that the
Plaintiff stole
his Sheep.

¶ **Q**uando, &c. Et die qđ acced
Quia die qđ ante diem in
trac brevis original pđia' A. Et
pđia' tempus quo supponitur die
verborum pđia' fieri scit (tali die
no) pđia' A. vi & armis quinq
ipſius C. pđii 50 s. apud S. in Com
invent felonice furat fuit cepit &
duxit contra pacem dia' Dñi
nunc Coron & Dignitat suas p qđ
C. dicto tempore quo, &c. apud S.
dixit de pſat A. pđia' verba Angli
in Brevi & Parr pđia' videt, A.
(pđia' A. modo quer innuendo) hach
my Sheep, (&c.) prout ei bene licuit
hoc, (&c.) Unde, &c.

Repl.
Non cul' de
Felon.

Et pđia' A. (pcludi non, &c.)
die quod ipse in nul'o est culpabil
felon pđia' prout pđia' C. supius
gavit Et hoc per qđ inquiratur
triam Et pđia' C. sicut Ideo.
Hern. 220, 240. Rob. Entr. 71.



Case.

Justification,
for that the
Cup was
found upon
the Plaintiff ff.

A Conon non, Quia die quod p̄dict' quer ante p̄dict' vicesimum diem Maii Anno 7. supradicto scitit (tali die anno) vi & armis videlicet gladiis baculis & cultellis cum & domum ipsius def. apud R. in Com p̄dict' fregit & intravit & unum Poculum Argenteum (Anglice a Silver Cup) ad valenciam 40 s. de bonis & catallis ipsius def. adtunc & in invent' felonice furat' fuit cepit & portavit contra pacem Dñi Regis nec quod quidam Poculum Argenteum eius spec' post feloniam p̄dict' p̄ p̄fate in forma p̄dict' fact' & ppetrat apud p̄dict' fuit invent' in possessione ipsius per quorū quidem felonie p̄textu idem p̄dict' postea scitit die & anno supradict' apud R. p̄dict' p̄dictum quer coem latrocinium & furem esse palam & publice dixit & publicavit & p̄p̄alavit put ei licuit Et hoc, &c. Unde, (&c.)

Repl.
And Tra-
verse.

Precludi non, Quia die quod p̄dict' def. & malitiose machinans nomen & famam ipsius quer ledere & denigrare ipsum totaliter destruere ac bona & omnia sua & tenita sua forisfacere & ledere eundem quer' unum Argenteum Poculum (Anglice a Silver Cup) de bonis ipsius def. apud R. in Com p̄dict' furat' & p̄dict' 20 die Maii supradict' apud p̄dict' publice dixit retulit & publicavit quorū p̄textu idem quer' tam nomine & fama quā in bonis & catallis multipliciter inquietat verat' & decipiat' existit prout ipse supius versum

Case.

eum querit absq; hoc qđ idem quer
 Poculum Argenteum de bonis p̄dic
 def. felonice furas fuit put idem def. su
 pius allegavit Et hoc parat est veris
 care unde p̄t iudicium & dampna su
 occoñ p̄miss. sibi adjudicari, &c. Vid
 Bro. Red. 99. & vide ante.

Rejoinder.
 And Issue up
 on Traverse.

Et p̄dic' def. ut prius die qđ p̄dic
 quer p̄dic' Poculum Argenteum de bo
 nis ipsius def. apud R. p̄dic' vi & a
 mis & contra pacem Dñi Regis num
 felonice furas fuit cepit & asportavit p̄
 ipse superius allegavit. Et de hoc po
 super Patriam Et p̄dic' quer filie p̄
 p̄cept est Dic, (&c.)

N. versus B.

Justification,
 for that the
 Plaintiff had
 stolen a Horse
 Cujusdam Ig-
 notus.

N. **A**ction non, Quia dic qđ p̄dic'
 ante p̄dic' tempus quo supp
 nitur diccoñ & p̄palacon verborum
 in Parr p̄dic' N. spec scit 10 die Ma
 ri Anno, (&c.) apud, (&c.) unu
 Equum cuiusdam p̄son eidem B. ign
 adtunc & ibm felonice cepit & asportab
 Pro qua quidem felonica capcōne & a
 portacōne Equi p̄dic' p eund N. id
 B. p̄dicto tempore quo, (&c.) p̄dicta ve
 ba anglicana in Parr p̄dic' spec de
 N. palam & publice dixit extulit & p̄
 palabit put ei bene licuit Et hoc, (&c.)
 Ande, (&c.)

Repl' De Injur sua pp̄d. Br. Red. 99

N. v.

versus B. for charging him with House-breaking.

Et p̄dixit B. p̄ J. S. Attor̄n suum Justification, for that Bur-
 glary was committed.
 veni & defendi vim & injur quan-
 Et die q̄d p̄dixit A. (Acc̄on non)
 ia die q̄d ante p̄dixit tempus dic̄onis
 palac̄onis & publicac̄onis verbor̄ p̄
 pius p̄ p̄f̄at B. de p̄f̄at A. publicari
 p̄posit̄ sc̄it 18 die Feb̄ Anno Regni
 Domini Regis nunc 7. Domus Man-
 alis ipsius B. apud E. in Com̄ p̄d̄
 diversos felon̄ & malefactor̄s felonice
 burglariter contra pacem Domini
 Regis nunc Cor̄on & Dignitat̄ suas
 & intrat̄ fuit q̄d p̄d̄ A. fuit
 us ex felon̄ & malefactor̄ibus p̄d̄ qui
 omum man̄onalem ipsius B. p̄d̄ fe-
 nice & burglariter in forma p̄d̄ fre-
 & intraver̄ Per quod idem B. po-
 sc̄it p̄d̄ primo die April̄ Anno
 Regis nunc octavo suprad̄ apud
 p̄d̄ verba p̄d̄ sup̄ius in Part̄ p̄d̄
 erificat̄ videt̄, A. R. is a Felon and was
 of them that broke open my House (Do-
 um ipsius B. p̄d̄ sic ut p̄f̄ert̄ felo-
 & burglariter fract̄ & intrat̄ innu-
 do) de p̄f̄at A. dixit retulit & propa-
 vit & publicabit p̄t̄ ei ex causa p̄d̄
 ne licuit Et hoc parat̄ est verificare
 inde p̄t̄ Judic, &c.

Note, In an Action on the Case for calling
 the Plaintiff Thief, if the Defendant justify
 them, for that the Plaintiff had stolen a certain
 Thing;

Case.

Thing; and the Plaintiff replies, That as the Felony committed, and before the Speaking of the Words, he was pardoned by a general Pardon: It shall avoid the Justification for by the Pardon the Felony was extinct. *Hob. 92. b. Vide Rob. Ent. 71. & vide Thomp. Hansf. 66.*

Defendant
justifies the
Words be-
cause of the
common
Voice of the
Country.

A. Accō non quia die qđ ante pđ tempus quo supponitur dictū pđ verborū in Parr pđē superius spē quidam A. B. fuit possessionat de spadone pđē ut de spadon suo ppđ Et inde possessionat existē idem spadon apud E. pđē extra possessionē ipsius felonice capē & furat fuit qđq̄ cois & fama totius populi pđē ibm tū fuit qđ pđē S. feloniam pđē fecisset quod idem A. pđicta verba Anglicā in brevi & Parr pđē superius spē pđicat S. pđicto tempore quo, &c. dicit retulit & ppalavit put ei bene licuit hoc parat est verificare. Unde per Jūdi si Accōd, &c.

Repl.
De injur' sua
prop'r.

(Precludi non) quia die qđ pđē die & anno supradict' in Parr pđē superius specificat de injur' sua prop' & alique causa p ipm A. superius allegat apud E. pđē palam & publice dixit ppalavit & publicabit de pñat S. pđē falsa ficta & scandalosa Anglicana verba in brevi & Parr superius spē vide (S. B. hath stolen A. B.'s Gelding, &c. prout ipse superius dñus cū querit Et hoc per quod inquiratur per pñat Et pñat' A. sitit Ideo. Vide i Br

22. Quod Cōis vox fuit, Et. Rob. Case.
Ent. 95.

A. versus C.

A Cēon non, quia die qđ pzed A. ante Justification,
pzed tempus quo supponite dic- for that the
one) & ppropalacon pzed Anglicanorum Plaintiff sold
verborū in Parr pzed superius spec fieri Wares by
nit & adhuc est Aromatarius (Ange a false Weight.
grocer) ac p tot tempus in Parr pzed
uperius spec apud London pzed in
Paroch & Warda pzed usus fuit & exer-
uit facultates suas in mystério pzed ac
& Merchand dic' facultat sive my-
steriū pzed concernen p tot tempus il-
ud ibm de tempore in tempus quibul-
amq' dic' Dñi Regis ligeis vendidit &
utterabit Et idem C. ulterius die quod
ante pzed tempus quo supponitur dic-
one) & ppropalacon pzed Anglicanorum
verborum fieri in utendo & exercend fa-
cultat sive mystérium pzed apud London
pzed in Paroch & Warda pzed vendi-
t & utterabit diversas res mercimon
& Merchand dic' facultat sive myste-
rium concernen cuidam C. f. & diver-
s al ligeis dic' Dñi Regis nunc per
als & illitūm pondi & pcipue per quod-
am pondus vocat a Pound weight quod
se fuit deficiens & indigebat ut sui
ponderis scđm Standard una Uncia &
dimid unius Uncie per quod idem C.
postea scilicet pzedicto 13 die Januarii
Anno 7. supradicto apud London pzed
in Paroch & Warda pzed dixit & pro-
palabit

Case.

palabit de p̄fac A. verba Anglicana in
 Parr p̄dia' superius spec videst (he
 A. innuendo hath cheated his Customers by
 false Weight, &c.) prout ei bene licuit
 hoc, &c. Unde, (&c.)

Repl' De injur' sua prop̄d.

A. versus B.

Defendant
 justifies, for
 that the
 Plaintiff
 owed him the
 Money de-
 manded, &c.

Quando, &c. (Accōd non) quia dic-
 qū ante p̄dia' tempus diccōnis pro-
 palationis & publicacōnis Anglicana-
 rō verborū p̄dia' scilicet 10 die Junii An-
 no, (&c.) 7. apud S. in Com p̄dia' p̄-
 dictus A. vere & juste indebitae fuit p̄-
 fac B. in quadam denar sumā videst
 5 l. legal monete Angl p̄ diversis merc-
 mon & Merchandizis eidem A. p̄ p̄dia'
 B. ante tempus illud vendit & delib-
 p̄ qū idem B. p̄dicto tempore quo, &
 scit p̄dia' p̄mo die Septemb' Anno
 supradicto venit ad ostium Domi man-
 cōnal p̄dia' A. in Parr p̄dia' mencōna-
 scituae in S. p̄dia' & idem B. claman-
 do debum suū prop̄d adtunc & ibi
 dixit propalabit & alta voce publicabit
 de p̄fac A. p̄dia' Anglicana verba in
 Parr superius spec videst (Mr. A. owe
 me Five Pounds, and I will stay here deman-
 ding of it till I be paid) prout ei bene licuit
 Et hoc parat est verificare unde per
 dicium si p̄dia' A. Accōd suam p̄dia' in
 de versus eū here seu manutenere de-
 beat, &c.

Rep

Repl' De injur' sua prop'. Vide 1 Mod.
Intr. 43, 44.

In Banco Regis, That the Plaintiff was forsworn
as a Witness.

M. versus P.

A Ccon non, (Ec.) quia dic qd bene Justification,
E verum est qd ante dicon E for that the
propalacōn Anglicanorum verborū in Plaintiff for-
Pare p'dict' superius spec scilt in Ter- swore him-
mino Sed Hillarii ulc p'tie in Pare self.
plus M. mentōnat quedam Accō in
placito transgr dependens fuit in p'dice
Cur die Dñi Regis coram ipso Rege
ne p'dict' C. quer' E p'dict' B. Def. super
quam quidem Accōnem talie p'cess' esset
d' erit supinde junct' in p'dict' C. E p'dict'
B. ven' triand per quandam Jur' p'dice
die Junii Anno Dñi Regis nunc 7.
apud Westm p'dict' in magna Aula pla-
torū ibm coram p'dict' J. N. Mil Ca-
pital Justie die Dñi Regis ad p'lita co-
ram ipso Rege tenend' Assigā scdm for-
nam Statut, Ec. Et idem P. ulterius
die qd erit p'dice existend' an p'dict' C.
tempore transgr ill' supposit' evenisset
extra Limie ipsius C. (eodem C. tunc
jurat existend' Constabular de J. in Comd
Middx p'dict') vel non, Super quo p'dict'
M. modo quer' postea scilt p'dict' 13 die
Junii Anno 7. supradicto coram J. N.
Capital Justie p'dict' apud Westm
p'dict' in p'dict' Magna Aula p'litorū
ibm in Comd Middx p'dict' tanqm te-
stis

Case.

stis ad probandū Erie predicta' ex parte
 predicti B. producta' fuit ac ad tunc & ibi
 coram prefato Capitali Justicie debita juria
 forma jurata fuit in Evidencia dare prefato
 Jurato' veritatem totam veritatem & nihil
 preter veritatem Et superinde interrogatus
 super Sacramentum suum predicta' utrum predicta' C.
 evenisset extra limitem predicta' C. vel non
 M. ad tunc super Sacramentum suum predictum coram
 predicta' Capitali Justicie apud W. predictum in
 Magna Aula plitorum ibidem in Comitiis
 Middelburgh predicti Juris ille tunc in evidenciam de-
 dit & affirmavit quod predicta' C. evenisset
 extra limitem predicta' C. (innuendo limitem
 ipsius C. ut Constabularius de J. predictum eris-
 tendum) Nam quando predictus C. flecteret (Anglice
 should have turn'd) ad dextram manum
 flectebat ad sinistram manum Ubi reverte-
 retur predictus C. non evenit extra limitem predictum C.
 sed infra limitem predicta' C. predicta' am-
 bulavit per quod predicta' N. predicta' i-
 die Junii Anno 7. supradicto apud W.
 predictum in Comitiis Middelburgh predictum Colloquium
 habens de triacone predictum & de testamento predictum
 M. predictum super triaconem ille & cum prefato
 B. de & concernentem predictum M. & de & concernentem
 predictum testamentum quod predicta' M. ad tunc
 ibidem in Evidenciis dedit ad triaconem predictum
 in Causa predictum in prefato C. & D. de eadem
 dem M. dixit eadem Anglicana verba
 in Parte ipsius M. mencionat videlicet, That
 Fellow (predictum M. innuendo) hath forswore
 himself (predictum M. iterum innuendo) in
 what he hath said, prout ei bene licuit
 Que quidem verba que predictum M. ad tria-
 conem predictum prius mencionat in evidenciam Juris
 predictum

et dedit fuer falsa & veritat penitus
 trar Et hoc, (Et.) Unde, (Et.)

Case.

Repl' De injur sua ppropd. Vide Ast. 21.
 compf. 65.

Note, In an Action of the Case, A. *versus* B.
 the Plaintiff declare, That he took his Oath
 the Court of *King's-Bench* against B. of cer-
 Matters, (Ec.) That thereupon B. falsly
 maliciously intending to scandalize the
 Plaintiff in the Hearing of the Justices and
 Officers of the Court, and others being there,
 There is not a Word true in that Affidavit;
 and I will prove it by forty Witnesses;
 such Action is not maintainable: For the
 Oath which B. made to the Affidavit was a
 perjury in Law, and spoken only in De-
 fiance of himself, and in a legal and judicial
 manner, being he said, He would prove it by
 forty Witnesses. Vide 1 Roll. Abr. 87.

And there is also a Case cited, That in Fox,
 the Book of *Martyrs*, there is a Relation of
Greenwood of *Suffolk*, who is there reported
 to have perjured himself before the Bishop of
Wich, in witnessing against a Martyr in the
 reign of Queen *Mary*; and that afterwards he
 came to his House, and there, by the Judge-
 ment of God, his Bowels rotted from his Bel-
 ly, an exemplary Punishment of Perjury. One
 being newly made Parson of the Parish
 where the said *Greenwood* inhabited, and not
 knowing his Parishioners, preaching
 against Perjury, cited this Story, and it hap-
 pened that *Greenwood* was alive and in the said
 Church; and afterwards brought an Action
 of

Case.

of the Case against the Parson, and it was judged not maintainable, because it was spoke maliciously. *Vide 2 Co. 91.*

C. versus R.

Aliter.
2a Quer' fuit
perjurat' ut
testis.

Et pzed C. Accōnem non, (Ec.) Qui dicit qđ quidam C. S. diu ante tempus quo supponit dicōnem & pplacōnem verborum pzed' in Parr' p' spec' implitasset quendam A. B. in C. dic' Dñi Regis de Banco hic de eo quod ipse Vi & armis C'm ipsius C. apud D. in Com' pzed' fregit in quo quidam p'rito pzed' A. dixit qđ ipse in nullo t' inde Culpabilis put pzed' C. superius versus eum querebatur Et de hoc post se super p'riam & pzed' Quer' similis quidam exitus p. b2o Dñi Regis de si p'ius coram Justic' ad A'las in C. p'dco apud D. in Com' pzed' (tali die Anno) p p'riam ibm triand' hic fuit quem quidem diem apud D. pzed' coram (Ec.) Justic' ejusdem Dñi Regis A'las in Com' p'dia' capiend' A'ligm Quer' testis ad triand' exie p'dia' cum ibm jurat' in evidenciis dedit super p'rim' suu' quod pzed' C. fuit scit' de p'dco in Dñico suo ut de feodo & quod idem C. & Antecessores sui & eorū Balli' semper ceperunt reddit' inde ad eorū p'p'riū usum in quo quidem Sacrament' pzed' C. commisit p'juriū manifestum quod idem C. non fuit scit' de p'dco in Dñico suo ut de feodo nec idem C. Antecessores sui neq; eorū Balli' quod

quam pceperunt reddit inde ad eorū
 ppū usum p quod idem A. p̄dco tempore
 uo, &c. dixit & p̄nunciabit de p̄lar C.
 dia' verba in b̄ri & Barr superius spec
 ut ei bene licuit, Et hoc (&c.) Unde si
 rio, &c.

Repl:

(Precludi non) debet, Quia dic qd
 dia' A. de injur sua p̄pria absq̄ causa
 er ipsum A. superius allegat' Machi-
 ans & intendens ipsum C. minus rite
 gravare ac nomen & Statū sua ledere,
 trahere & pejorare ac ipsum C. in
 turbatōn veracōnem & infamiam in-
 cere p̄dca verba falsa Scandalosa &
 endacia de ipso C. apud D. p̄dia'
 rit & p̄nunciabit put idem C. supius
 elus eum queritur, Et hoc, (&c.) Si-
 Barr ut Testis ad Sessionē Pacis &
 is Repl, Bro. Red. 60. Sitis Barr
 Testis sup Interrogatō in Cane,
 Gen. 28, 29. Sitis Barr ut Def' p
 spons' in Cane, Clift. 103. Sitis in
 ur coram Reg & Consilio, Pl. Gen. 28.

Defendant justifies the Words of Perjury;
 that the Plaintiff being sworn at a Court-
 et, revealed the Secrets of the Jury. Bro.
 d. 118.

Sitis Justification, for that the Plain-
 forswore himself about the Limits of a Pa-
 h. 2 Mod. Intr. 134.

Case.

R. S. versus J. P.

Defendant
pleads, That
he was di-
strained,
sworn and
put upon the
Inquisition
by which the
Plaintiff was
indicted, &c.

Repl.
No such Re-
cord of his be-
ing sworn up-
on the Inqui-
sition.

ET p̄dict' J. P. die q̄d p̄dict' R. S.
Actionem suam p̄dict' versus eum
here non debet quia die q̄d ipse distric-
fuit p̄ h̄c Dñi Regis ad comparend' co-
ram A. B. C. D. & sociis suis Justici-
Dñi Regis ad diversa felon' transgr̄
malefca in dco Com' U. audiend' & te-
minand' necnon ad pacem in eodem Com'
conserband' Assign' apud p̄dict' Villam
de N. p̄dict' die Martis pr' post festum
Sed Michis dco Anno teio quo p̄terit
idem J. tunc ihm p̄ districconem com-
parend' p̄ nomen, (Ec.) jurat' fuit simul
cum aliis ad inquirend' de felon' trans-
& al' malefactis in eodem Com' U. p̄-
erat p̄ quam Inquisitionem p̄dict' R. S.
indictat' fuit de Felon' p̄dict', Et hoc p̄-
rat' est verificare, Unde petit iudiciu'
idem R. Accon' p̄dict' in hoc casu h̄c
cum here seu manutenere debeat, (Ec.)

Et p̄dict' R. S. die q̄d ipse ab Acco-
sua p̄dict' versus p̄fat' J. P. h̄nd' p̄-
qua p̄ ipsum p̄allegat' p̄cludi non debet
quia dicit q̄d nullu' tale h̄et Record'
(viz.) q̄d idem J. juratus fuit cora
p̄fat' Justic' pacis ad inquirend' de felo-
transgr̄ & al' malefca in p̄dict' Co-
U. p̄petrat' quale idem J. superius
legavit, Et hoc parat' est verificare
Cue Dñi Regis hic cons' unde ex q̄
p̄dict' J. P. conspiraconem p̄dict' m-
dedic' p̄t' iudiciu' & dampna sua ca-
cone sibi adjudicari, (Ec.)

Bar al Slander.

303

Et p̄dict' J. P. die q̄d tale h̄et̄ h̄e-
p̄dict' viz. q̄d ipse juratus fuit coram
at Justie pacis ad inquirend' de telo-
is t̄n̄ge & al' malef̄cis in p̄dict' Com
pp̄erat quale idem J. superius alle-
vit. Et hoc parat' est verificare put
at Dñi Regis hic Cons' Jō quoad
me Exitum triand' dat' est inde dies
m p̄fat' R. S. q̄m p̄dict' J. P. hic
p̄fat' Terminū & dictum est eidem
P. q̄d tunc hic deferat' h̄ecor̄d' sub
ulo incumbenti, &c.

Case.
Rejoinder.
Qd' h̄'ar', and
Defendant
ordered to
bring the Re-
cord Peric'lo
incumb'.

Vide 2 Bro. 14. Winch. Ent. 107. Vid. 145.

To Action for Slander of Title.

THE Defendant pleads in Bar, and shews
a Covenant for H. S. to stand seized to
Use of his Will, and then sets forth the
limited by the Will of H. S. That after-
H. S. died, and afterwards the Husband,
of the Legatees, died, and that his Wife
oved the Term by Survivorship. Per
he spoke the Words.

Slander of
Title

Ac p̄dict' J. C. & O. fuer' de in-
se p̄d' termini Mille annor' de & in
m Maner' terr' t̄ntis & heredita-
tis cū p̄tid' p̄ ult' voluntat' p̄dict' ut
legat' possessionat' virtute legation
tatur p̄dict' Ipsos J. & O. sic inde
s' existēd' p̄dict' J. apud U. p̄dict'
interesse Termini ill' obiit posses' ac
O. ipm' supervixit & fuit & adhuc
p̄dicto interesse Termini ill' posses-
t p̄ jus accrescendi p̄ quod idem

Bar.

*R. S. pñ tempore quo, &c. asseruit rem
declarabit & publicabit, Qñ pñia' q
nerit de U. cñ pertiñ unde pñia' q
draginta acr terre cñ pertiñ in U. pñ
sunt & pñio tempore quo, &c. fuer p
cell, Ac pñia' quadraginta acr terre
B. pñ litime securat fuer p pñia' p
plat J. C. & O. in vita ipsius J.
eorñ ppñ usus p Termino mille ann
pr' & imēdiate sequen decel's pñia' p
& A. ux' ejus; Et qñ pñia' J. C. &
in vita ejusdem J. fuer de interesse
dia' Termini ejusdem Maner de U
pertiñ ac pñia' 40 acr terre in B.
dia' litime possessionat, Et qñ pñia'
post mortem pñia' J. C. fuit sola
cel's de humoi interesse ejusdem
nerit & pñia' 40 acr terre in B. pñ
jus accrescendi, &c. prout ei bene li
Et hoc, (&c.) Unde, &c.*

Vide Coke's Ent. Tit. Action sur le
for several Pleas to Actions for Slander del
viz. fo. 34, &c.

In these last Pleadings before — as
many other following, there are and w
often used *Protestando's*, *Averments*
Traverses, &c. and therefore it will
amiss to consider them severally in this

Of a Protestando.

Protestando.

AND First, as to the *Protestation*
testando: To come to the Know
of this we must observe, that the La
hardly allow *Duplicity* in Pleading, a

Case.

Double Plea.

as afore observed; for if a Man alledge several Matters, the one nothing depending on another, the Plea is accounted double: Yet if the Plea doth contain divers Matters in it, in which an Issue may be taken, if the Plea could not have been good without allying all those Matters in it, in such Case the Plea is not double; for the Law doth not require the Defendant to plead all such Matters as his Case affords for his just Defence. And he is not compelled to alledge double Matter in his Plea, yet if he do insist upon one of them, the Plea is not double.

However, to prevent this double Pleading, we make use of a **Protestando**, which is a guard to the Party, and maketh it from being concluded by the Plea he is about to make, that Issue cannot be joined upon it.

Protestando,
what.

And it is also a Form of Pleading, where one will not directly affirm or deny any Thing which is alledged by another, or by himself, but is therefore of Two Sorts:

One of which is, When a Man pleadeth something which he dareth not directly affirm, but that he cannot plead for fear of making his Plea double; as if in conveying to himself by Plea a Title to Land, he ought to plead several Descents by divers Persons, and he dare not affirm that they were all seised at the Time of their Death; or altho' he could do it, yet it might be double to plead two Descents, of which, each by it self may be a good Plea: Then the Defendant ought to plead, I alledge the Matter, interlacing the Word **Protestando**; as to say, **Protestando**, that a one died seised, &c.

Of two Sorts.

Case.
Not traver-
sable.

And this the adverse Party cannot traverse.

2. The other is, When one is to answer two Matters, and yet by the Law he ought to plead but to one; then in the Beginning of his Plea he may say, *Protestando*, that the Matter is not true, or so as the Plaintiff proposes; and then making his Plea further, adds *Pro plito dicit*, &c. and so he may take Issue upon the other Part of the Matter, and then he is not concluded by any of the Issues of the Matter he hath by Protestation denied, but that he may afterwards take Issue upon it. *Vide Finch Ley 359.*

Protestando non cogn', &c.

Sometimes it is used in these Words, *Protestando non cognoscendo*, such and such Things, *Pro plito in hac parte idem dicit*, &c.

Of what it
ought not to
be.

Some Books say, That the effectual Matter of the Bar ought not to be taken by Protestation; and that Things issuable or traversable may not be taken by Protestation, 39 H. 6. 1 *Com. 277. b.*

Not to be re-
pugnant.

And that the Protestation ought not to be contrary to it self; for if it be repugnant it is void, 22 H. 6. 37.

Which of the
two Things.

If two Matters be pleaded, *Scitit seipsum del Roy & Nient parcel del R. the Seal of the King shall be taken by Protestation* 2 H. 6. 15.

There is also a *Protestando* used many Times in a Declaration, as in Covenant, Form whereof follows:

Case.

*Protestando
pro & con' in
Covenant.*

Et idem Quer Protestando qđ ipse a tempore confecconis Indenture p̄f̄at Def' huc usque bene & fideliter performabit perimplebit & Custodivit & singula in Indentur p̄d' superius ex parte ipsius Quer fore performand' & Custodiend' scđm formam & ceterum Indenture ile Protestando eciam (at the Defendant) non performabit perimplebit seu Custodivit aliqua in Indentur p̄d' superius specificat ex parte p̄d' Def' fore performand', &c. In facte Plaintiff says, That the Defendant did suffer the House to be ruinous, &c.)

that the Tenements were divided, and not contained in the Fine.

Et p̄d' J. G. Protestando qđ Centa p̄d' cum pertind' superius Parr p̄d' specificat & divis fuerit Hanerio p̄d' p̄ p̄f̄at G. G. ante finem p̄d' in forma p̄d' leuat Protestandoq; eciam qđ Centa p̄d' cum pertind' superius in Parr p̄d' specificat in continenre in fine p̄d', Pro plito amen idem J. G. die qđ p̄d' G. R. post confecconem ult' voluntat' sue p̄d' & ante finem p̄d' in forma p̄d' leuat scit tali die (& anno) apud S. p̄d' obiit, & hoc, (&c.) Unde, &c.

*Protestando qđ
in Bar.*

*Protestandoq;
eciam.*

Pro placito dic.

Et modo scit die Iovis pr' post Octab Sed Will isto eodem Term p̄d' apud Westm ven p̄d' J. S.

*Protestation,
That the In-
formation is
insufficient,*

Case.

p J. H. Attorn suū, Et hito auditu In-
formacon p dia' die qd ipse non intendit
qd dia' Dñus Rex nunc ipm J. S. p
Premissis in Informacon p dia' superius
spec' ulterius impetere seu occasionare
velit aut debet, Quia Protestando die
qd Informaco p dia' ac Materia in ea-
dem content' minus sufficiend in lege erit
sunt ad quas ipe necesse non het nec
legem Terre tenete respondere pro p liti
tamen die qd Carolus primus nuper
Rex Angl, &c.

Pro placito die'.

*Protestando,
2a' plene Ad-
ministravit.*

ff. **E**t p dia' C. quarto die p liti solemp-
niter exaa' p E. C. Attorn suū
ben & die qd p dia' M. execucon suā
de debo & dampnis p dia' de bonis & ca-
tallis p dia' C. ppd lebat here non de-
bet, Quia Protestando qd ipse idem C.
plene administrabit oia bona & catalla
que fuer' p dia' J. tempore mortis su-
in manibus suis administrand, Et q
p dia' C. non het nec tempore psecuco-
p dia' hris de Sed fac huiusmodi aliqua bo-
na seu catalla que fuer' p dia' J. tempore
mortis sue in manibus suis admini-
strand, Pro p lito p dia' E. die qd ip-
non vendidit seu elongabit vel in usu-
suum ppd convertit & disposuit aliquā
bona & catalla que fuer' p dia' J. tem-
pore mortis sue modo & forma prout
Inquisicon p dia' supius supponitur
Et hoc parat' est verificare unde p
Judicium si p dia' M. execucon suā
de debo & catallis p dia' C. ppd he-
beat, (&c.)

*Et quod non
habet.*

*Pro placito qd
non vendidit
seu elongavit.*

Bread

Breach assigned for ousting him of the
Lands.

Acton non quia Protestando qđ *Protestando,*
eadem P. conventionem suam *That he kept*
warrant pđia' a tempore leuacōn finis *his Warranty.*
pđia' ex parte sua custodiendū hucusq;
bene & fideliter custodivit, Protestan- *And that H.S.*
doq; etiam qđ pđia' H. S. pđia' tem- *non habuit jur.*
pore intracon iplius H. in tēta pđia'
non fuit aliquod legē ius aut titlum
ad eadem tēta cum pñ, Pro pñto *Pro placito*
eadem P. dic qđ pđia' H. S. ipm J. a *non eiecit.*
possessione & occupacone tētozum pđia'
non eiecit expulit & amovit prout pđia'
J. supius inde versus eam narrabit,
Et hoc (Ec.) Unde (Ec.)

Def' non cogn qđ, (Ec.) without a Pro-
testation, 44 Aff. 35.

Protestando & non cogn aliqua fore
vera, Rast. Ent. 617.

Operat Protestaciones contra materiam
in Parr & alia Protestaco qđ agreeat
fuit qđ, Ec. Rast. 4.

Protestando non cogn 4. materias al-
legat in Parr, Co. Ent. 28.

Diverse Protestaciones in principio pliti,
Rast. 519, 553.

Protestando qđ Parr est insufficiens in
lege, Ec. Co. Ent. 43. 711.

Qđ plitum est insufficiens in lege, Ec.
36. 628.

Protestando non cogn aliqua in Parr
fore vera, Co. Ent. 43.

Qđ

Case.

p J. H. Attornd suū, Et hito auditu In
formacon p̄dia' dic qđ ipse non intē
qđ dia' Dñus Rex nunc ipm J. S.
Premissis in Informacon p̄dia' superius
spec' ulterius impetere seu occasionari
velit aut debet, Quia Protestando dic
qđ Informaço p̄dia' ac Materia in ea
dem content' minus sufficiē in lege exi
sunt ad quas ipe necesse non het nec
legem Terre tenete respondere pro p̄li
tamen dic qđ Carolus primus nup̄
Rex Angl, &c.

Proplacito dic'.

*Protestando,
2a' plene Ad-
ministravit.*

ff. **E**t p̄dia' C. quarto die p̄lii solē
niter exa' p C. C. Attornd suū
vēd & dic qđ p̄dia' M. execucon suā
de debito & dampnis p̄dia' de bonis & ca
tallis p̄dia' C. pp̄d lebat herē non d
bet, Quia Protestando qđ ipse idem
plene administrabit oīa bona & catalla
que fuer' p̄dia' J. tempore mortis su
in manibus suis administrand, Et
p̄dia' C. non het nec tempore p̄secucon
p̄dia' h̄is de Sed fac hūisset aliqua b
na seu catalla que fuer' p̄dia' J. tempo
mortis sue in manibus suis admin
strand, Pro p̄liito p̄dia' C. dic qđ ip
non vendidit seu elongavit vel in usu
suum pp̄d convertit & disposuit aliqu
bona & catalla que fuer' p̄dia' J. tem
pore mortis sue modo & forma p̄p̄d
Inquisicon p̄dia' supius supponit
Et hoc parat' est verificare unde p
Judicium si p̄dia' M. execucon suā
de debito & catallis p̄dia' C. pp̄d he
debeat, (&c.)

*Et quod non
habet.*

*Pro placito qđ
non vendidit
seu elongavit.*

Brea

Breach assigned for ousting him of the
Lands.

Acton non quia Protestando qđ *Protestando,*
eadem P. conventionem suam *That he kept*
narrant pđia' a tempore leuacōn finis *his Warranty.*
pđia' ex parte sua custodiend hucusq
ene & fideliter custodivit, Protestan- *And that H.S.*
qđ etiam qđ pđia' H. S. pđia' tem- *non habuit jur.*
ore intracon iplius H. in testa pđia'
on fuit aliquod legle jus aut ritum
eadem tenta cum prin, Pro plito *Pro placito*
eadem P. dic qđ pđia' H. S. ipm J. a *non ejecit.*
offessione & occupacone tenozum pđia'
on ejecit expulit & amovit prout pđia'
supius inde versus eam narrabit,
hoc (Ec.) Unde (Ec.)

Def' non cogn qđ, (Ec.) without a Pro-
testation, 44 Ass. 35.

Protestando & non cogn aliqua fore
vera, Rast. Ent. 617.

perat Protestaciones contra materiam
in Parr & alia Protestaco qđ agreeat
fuit qđ, Ec. Rast. 4.

Protestando non cogn 4. materias al-
legat in Parr, Co. Ent. 28.

olverse Protestaciones in principio pliti,
Rast. 519, 553.

Protestando qđ Parr est insufficiens in
lege, Ec. Co. Ent. 43. 711.

qđ plitum est insufficiens in lege, Ec.
36. 628.

Protestando non cogn aliqua in Parr
fore vera, Co. Ent. 43.

Qđ

Case. *Quod T. non fecit testum nec fecit querere*, Plo. 275.
Quod bona non fuer tanta neq; tanti valoris, Rast. 636, 640, 648, 649, 667.

Vide Townsend's Tables, fol. 374. and Cornwall's Tables, fol. 367, &c.

Of Averments.

THEY are of two Sorts, General and Particular.

General. A General Averment is, the Conclusion of every Plea, Bar, or Replication, and other Pleadings, containing Matter affirmed which ought to be averr'd. *Et hoc paratus est verificare*, (&c.)

Particular. Particular Averments are, where the Life of the Tenant for Life, or of Tenant in Tail, are averr'd.

Also of the Age of a Person; as also the Places, Sums of Money, and Persons named are one and the same by the Words, *Cum hoc quod idem A. * B. verificare bull* qd, (&c.)

*** The Person averring.** The Use of an Averment is, to ascertain that to the Court which is generally or doubly alledged, that so the Court may not be perplex'd of whom or of what it ought to be understood. And a Man shall never be estopped for making such Averment, to ascertain the Intent of the Parties, if it be not utterly inconsistent with the Deed.

And when.

And therefore, if there be any Uncertainty in the Consideration of a Deed, or in the Thing granted, or in the Person to whom the

Grant is made, there is allowed an Averment to make this certain.

Cafe.

As to the Defect in the Consideration of a Deed, *Vide* 1 Co. 176. *Leon.* 170. *Lane's Cafe.* Of the Consideration of a Deed.

And tho' there be an exprefs and particular Consideration alledged in the Deed, as of Money; yet another Conderation may be averr'd, so it be not contrary to the Deed, as the Consideration of a Marriage and Jointure.

4 Co. 3. *Dyer* 146. 7 Co. 40.

So of the Uncertainty of the Thing. *Vide* 3 Co. 55. *a. Altham's Cafe.* Incertainty of the Thing.

And as to the Ambiguity or Incertainty touching the Person, *Vide* 5 Co. 68. *Cheny's Cafe,* 2 *Leon.* 35. 3 *Leon.* 79. 4 Co. 71. 6 Co. 20. Incertainty of the Person.

Hob. 32. *Mo.* 105.

The Law does so favour the Intent of the Parties, that it will in some Cafes allow a Deed to be expounded differently from the ordinary and most natural import of the Words; as that the Money upon the Bond was not to be paid the 24th of the Month it was dated, but in the next Year following. *Rolls Tit. Pa-* Averment different from the Import of the Words.
ols 251. *Hob.* 269.

Counts and Avowries in Nature of Counts, need not to be averred. *Co. Lit.* 303, 362. *a.* Counts and Avowries.
fruit & adhuc existit seifitus, is a sufficient Averment of Life in a Count. *Dyer* 304. *ex stit.*
Roll 50.

One may aver what Day the Deed was inrolled. 4 Co. 71. Inrolment of Deed.

But an Averment doth not lie against a Record, being a Thing of a solemn and high Nature, the other being only an Allegation of the Party. Not against a Record, &c.

Nor

Case.

Not in Utlary, &c.

Nor may one aver a Thing directly contrary to the Condition of a Bond.

In case no Traverse can be taken, the Plaintiff ought not to aver his Plea; as in case of Utlary, and of an Excommunication certified, 36 H. 6. 17, 18.

Averment of Tenant for Life.

ff. **C**um hoc quod p̄dict' W. & C. verificare volunt qđ p̄dict' Comes & Comitissa L. (the Tenants for Life) adhuc superstites & in plena vita existunt videlicet apud London p̄dict' in Paroch & Warda p̄dict'.

Of Cestuy que vie.

ff. **C**um hoc qđ p̄dict' T. D. verificare vult qđ p̄dict' F. (Cestuy que vie) super p̄dict' festum diem Annunc' b' Marie Virginis Anno Dñi 1695. ac postea fuit supstes & in plena vita videlicet apud B. p̄dict' in Comd p̄dict', &c.

Sur Avowry pur Arrears de Rent charge per Baron en Droit sa Femme to cease, if the Executor should pay 100 l. &c.

ff. **C**um hoc qđ p̄dict' T. verificare vult qđ p̄dict' H. S. Executor Testi p̄dict' J. S. non solvit eidem T. & A. seu eorum alteri p̄dict' 100 l. in Testo p̄dict' J. S. sic ut prefertur mentionat juxta formam & effectū ejusdem Testi qđq; p̄dict' A. tempore captionis, (&c.) in sua plena vita fuit & adhuc superstes existit, scilicet apud H. p̄dict', Et hoc, (&c.) Unde, &c.

That his Son was alive, and had not attained the Age of 21.

ff. **C**um hoc quod p̄dict' T. S. filius maximus natus ejusdem T. adhuc superstes & in plena vita existit ac inter

etate viginti & unum annorum videlicet apud
parochiam de S. in Com. D. predicta.

Cafe.

Pleads former Judgment.

Et predicta M. D. ulterius dicit quod
scriptum Obi predicta in Recordi
Judicii Recuperacionis spec, Unde iidem
f. & H. debum predicta in forma predicta re-
cuperaver & scriptum Obi predicta p pre-
lat f. & J. R. modo hic in Cur plac
sunt unum idemque scriptum & non al-
terius diversa, Et hoc parat est verificare
unde ex quo iidem f. & J. debum pre-
dicta p ipsos superius modo petit in for-
ma predicta jamdudum recuperaver idem
M. per Judic & predicta f. & J. R.
Recordi Judicii & Recuperacion predicta in
omnibus plenis suis roboze vigore &
effecta adhuc existend accon suam predicta
inde versus eum here debeant, (Ec.)

That the
Bonds are
the same.

Cum hoc quod idem T. R. verificare
vult quod Indentur predicta p dem
nuper Regem Carolum primum plac
J. G. p termino predicta in forma predicta facta
in omnibus suis plen roboze & effectu
mido sursum reddit seu cancellat adhuc
remanet & existit, Quod Alumen semp
a predicta tempore consecrationis Indentur
predicta int plac nuper Regem & plac
J. G. hucusque infra Manium de M.
predicta facta & operat fuit, Quod hucusque
non fuit aliqua apparens Ratio p uti-
liori consecration Aluminis in aliquo al-
loco infra hoc Regnum Angl in Judicio
seu

In Replevin,
Defendant
avows as Bai-
liff, and avers.

Case.

seu determinacione aliquarum personarum
quarumcunque, &c.

*Quer' pleads
in Bar al
Avowry, and
then avers.*

Not excepted
out of the
A&.

Et idem J. M. modo quer' ulterius
die qđ Indentur pđia' in cogđ
pđia' menconat p pđia' nup Dñm Rē-
gem pstat J. G. ut prefertur fact' &
Ure Paten in Ordine pđia' primo super-
rius menconat specificat sunt una &
eadem Charta Concessionis & non alia
neq; diversa, Ne quod pđia' redditus in
Cogn pđia' menconat non est in Actu
pđia' Except nec p aliquem al Actum
Parliamenti disposit', Et hoc parat est
verificare, Unde per Judic & dampna
sua occasione capcon & injuste detencion
Aluminis pđia' sibi adjudicari, (&c.)

Simile.

Cum hoc qđ idem R. verificare
vult quod pđia' W. T. tempore
mortis sue fuit subdit dñi Dñi Regis
nunc regni sui Anglie idemq; R. T. mo-
do est subdit dicti Dñi Regis nunc reg-
ni sui Angl', Qđq; nec pđia' W. T. nec
pđia' R. T. sunt seu eorū alter est per-
sona in Actu pđia' except qđq; pđia' cri-
men felonie de se p pđia' W. T. ppetrat
non est crimen in Actu pđia' except, Et
hoc parat est verificare unde ut prius
per Judicium & executionem suam de de-
ho & dampnis pđia' recuperat sibi ad-
judicari, &c.

That the Per-
sons are the
same.

Cum hoc quod idem R. verificare
vult qđ pđia' W. T. in dicta billa
la pđia' T. superius intestat nōiat &
pđia'

dicta *W. B.* in Record separat Judi-
 corum dicta superius plitac intestat &
 iat fuer' una & eadem psona & non
 alia neq; diversa, Quod idem *R. P.* su-
 perius in isto plito Administrator &
 ominat dicta *R. P.* in duobus Judi-
 cis ult plitac Administrator noiae sunt
 & eadem psona & non alia neq; di-
 versa, (Ec.)

Note, That an Averment by the Words, Ablative
 Idem *A. & B.* habentibus, Ec. is as absolute.
 as Quod dicta *A. & B.* fuerunt, Ec.
 Saund. 60, 61.

That in an Assumpsit against an Heir, That the Heir
 on his Promise to pay Monies due upon was expressly
 the Bond of his Ancestor, he ought to aver bound.
 that the Heirs of the Obligor were expressly
 bound. *Idem* 136.

Note, That the Court will intend a perso-
 nal Obligation against an Executor, if he
 be Assets, although it is not averr'd; but not
 a real Obligation against an Heir, if it be not
 expressly alledged.

Note, The Words—Paratus fuit & ob-
 lit performare agreementum predicta
 omnibus ex parte sua performandi,
 are held a sufficient Averment after Ver-
 dict. 2 Saund. 352.

See more, Co. Ent. 542, 578, 583, 586, 594.
 9. 69. Plo. 188.

Quarter-Days may be averr'd upon these
 general Words, [The usual Feasts.] 2 Ventris

Vide Townsend's Tables, fol. 344. and Corn-
 wall's Tables, fol. 336, 337.

Que

Que est eadem.

Que est eadem.

IN some Places you have the Words *Que est eadem*, which looks something like an Averment, to shew what is meant.

When used.

They are commonly used in a Justification of a Trespass, &c. which the Defendant saith is the same Trespass, the same Imprisonment, the same Beating, &c. complained of in the Declaration. 2 Cro. 372. Kitch. 477.

Justification.

Trespass in London; the Defendant justifies by a Warrant the County of N. *Que est eadem tñsgr*, &c. and traverseth that he is guilty in London vel alibi extra Com. and good. 2 Cro. 372.

Needs not.

If the Defendant in Trespass justifies the same Day and Place, 'tis not necessary to say, *Que est eadem*, &c. 1 Bulstr. 1. Kelw. 27, 29.

Justification the same Day and Place.

21 H.7. 39. The same Law is of Goods carried out, if the Defendant justifies at the same Day and Place: And so in Trespass of Battery, if the Defendant justifies; for that the same Day and Place the Plaintiff made an Assault on him, and the Ill which he had was of his own Assault. He need not in these to say *It was the same Trespass*.

Needs not.

In false Imprisonment.

False Imprisonment by a Woman; the Defendant saith, That she was carried to Seclusion by her Consent, which is the same Imprisonment, and this is no Plea; for Imprisonment is against the Will of one, and that is not so, 14 H. 6. 2.

Not good.

In Assault and Battery, not good.

So in Assault, Battery, and Wounding, Defendant saith, That he laid his Hands upon

the Plaintiff peaceably, and arrested the Plaintiff the same Day, which is the same Assault, Battery, and Wounding; and held it was no Plea, for the Reason aforesaid, 21 H. 7. 49.

Yet in false Imprisonment the Defendant justifies as Sheriff, That he arrested the Plaintiff by a *Capias*; and 'tis good if he say, 'tis the same Trespass, otherwise not, 22 E. 4. *False Imprisonment* 29.

When the Defendant pleads a Conspiracy that is justifiable, he ought to shew that 'tis the same Conspiracy, 27 H. 8. fol. 2. *Conspiracy*.

Annuity is brought of Six and twenty Shillings and Eight Pence. The Defendant saith, he held of the Plaintiff by Six and twenty and eight Pence of Rent, which is the same Rent, and not good, for it cannot be the same, H. 6. 38. *Not the same*.

Debt upon Bond; the Defendant pleads *Not good*, *Quinag*. Plaintiff replies, That he let Land to the Defendant, rendering Rent; and saith, If he would seal the Obligation to him for the Rent behind, he would sue at the Common Law, which is the same Threatening, and is no good Plea; for this is a Plea, and not a Threatening, 16 Ed. 4. fol. 7. *Tu. Dures* 23.

Maintenance; the Defendant says, He carried the Money of him, whom the Plaintiff employed he maintain'd, to his Counsel, which is the same Maintenance, and no Plea; for this is no Maintenance, 34 H. 6. fol. 19. *Maintenance*.

Traverse.

Of a Traverse.

A Traverse is a Denial of something charged before, and is made by the Words *Abſq̃ hoc, &c.*

And { Sometime it is of the Matter;
Sometime of the Manner;
Sometime of the Day and Year;
Sometime of the Place.

Defendant pleads special Matter of Jointenancy, and traverses *Qd̃ fuit Tenens, &c.* Repl^r, *Qd̃ fuit Tenens*, and a special Traverse of the Matter of the Plea, and thereon. *Vide Raſt. Ent. 416.*

Defendant pleads with a Traverse: Plaintiff replies specially with another Traverse, Issue thereupon. *Raſt. Ent. 534, 663. Ent. 170, 294. Hern 250.*

Issue joined in the same Plea, in which the Traverse. *Raſt. 3, 6, 63, 66, 101, 539, 649.*

Issues upon a Traverse varying from a Traverse. *Raſt. 342, 649, 655, 656, 674, 700.*

For Traverse in *Quare Impedit*, *Raſt. 499, 528. Co. Ent. 485.*

Traverse of
Seisin.

A *Abſq̃ hoc quod p̃dict' ſt. V. poſt Recogid̃ debi p̃eidem defuna' in brevi de Sed fac ſupius tona' ſeu unq̃m poſtea fuit ſcit de ſuagiis p̃dict' cum p̃tid̃ in Viſco de ſcodo modo & forma put p̃ r*

his de Sed fac p̄dia' allegare, Et hoc,
(Ec.) Unde, (Ec.)

Case.

Trespass for Chasing of Sheep, Defendant Traverse of a justifies At service J. T. they being in his *Prescription.* Frank-tenement, called *Church lays*. Plaintiff replies, and subscribes for Common there. Defendant rejoins, and traverses the Prescription, and Issue joined.

Et p̄dia' J. H. dic' ut prius qđ p̄-
dia' p̄cia terre cum p̄tinē vocat'
C. in qua, (Ec.) est & p̄dia' tempore quo,
(Ec.) fuit solum & libum tēntum p̄fat'
J. T. pp̄), Et quia (Ec.) molliter fu-
gabit & chastabit put ei bene licuit mo-
do & forma put ipse idem J. H. supius
inde p̄litando allegabit. Absq̄ hoc
qđ p̄dia' W. S. & omnes illi quorū sta- Traverse.
tum idem W. modo her de & in p̄dia'
messuagia & duabus virgat' terre cum
p̄tinē a tempore cujus contrar' memoria
hominū non existit huc' (Ec.) (as in the Pre-
scription) tanqm̄ ad tēnta p̄dia' cum per-
tinē spectan' & p̄tinē modo & forma
put p̄dia' W. S. supius inde replicando
allegabit, Et hoc, (Ec.) Unde ut prius
per Judic', Et qđ p̄dia' W. S. ab ac-
tione sua p̄dia' inde versus eum habendū
p̄cludatur, (Ec.)

Et p̄dia' W. S. dic' ut prius qđ ipse
idem W. & omnes illi quorū statum (Ec.)
(as in the Prescription) tanqm̄ ad tēnta p̄-
dia' cum p̄tinē spectan' & p̄tinē modo &
forma put ipse idem W. supius inde re-
plicando allegabit, Et hoc per qđ in-
quiratur

Case.

quiratur p Patriam, Et p̄dix' J. h.
inde, &c. Ideo ven' inde Jur, &c.

Traverse of a
Custom, Pro-
tando.

Traverse.

¶ **E**t p̄dix' R. R. R. M. R. E. &
E. D. p̄testando non cogn' aliqua
per p̄dix' O. supius in hac p̄litae fore
vera dicunt ut prius q̄ ipsi iidem R. R.
R. & E. ut Ballivi p̄fat' G. B. & L. C.
bene cogn' cap̄con' averion' p̄dix' in p̄-
dix' locis in quibus, &c. herbam ibm
crescen' depascen' & dampnum ibm fa-
cien' put ipsi iidem R. R. R. & E. p̄
cogn' suam p̄dix' supius inde allega-
ver, Absq' hoc q̄ infra Manerium de
B. p̄dix' h̄ere seu a toto tempore cujus
contē memoria homin' non existit t̄lis
h̄ebate consuetudo q̄ omnes tenen' cu-
stumar' tētor' custumarioz Manerii de
B. p̄dix' huerunt seu h̄ere consuever
solam & separ' pastur' in p̄dix' locis in
quibus, &c. annuatim & quolibet anno
p̄ totum annum ad eoz libitum tanq̄m
ad tēta sua custumar' p̄dix' spectad
modo & forma p̄out p̄dix' O. p̄ hac
suam ad cogniōn' ipsor' R. R. R. & E.
supius inde suppon', Et hoc parat' sunt
verificare, Unde ut prius p̄t judicium
& reor' Averion' p̄dix' unacum dampn'
miā & expens' suis in hac parte susten'
iuxta formam Statut' p̄dix' sibi adju-
dicari.

Issue.

Et p̄dix' O. dic' (ut prius) q̄ infra
p̄dix' Manerium de B. h̄ere & a toto
tempore, (&c.) modo & forma put ip̄
idem O. in barram ad cogn' p̄dix' su-
pius suppon', Et hoc p̄t q̄ inquiratur
p

patriam, Et p̄dict' R. R. R. & C. in-
de silit, Iā p̄cepte est Dic, (Ec.)

Case.

Trespass of Assault and Battery, and False
Imprisonment, 1 April' 18 Car. 2. Regis, apud
Burgum de Warr vi & armis, &c.

AS to the Assault and Battery, Defen-
dant pleads *Son assault demesne*; and as to the Imprisonment, except 11 Hours,
Non Cul, and as to that, he says it was done
10 Jan. 16 Regis apud Civie Convente
in Comd ejusdem Civitatis, and then
shews that he did it as Sheriff, and wherefore.
*Que quidem imprisonamentum & in pri-
sona detentio ipsius T. R. p̄ spacium
11 horarū p̄dict' ex occōne ill' p̄d fact' est
eadem transgr̄ quoad imprisonament' &
in prison detene' p̄fat' T. p̄ spac' illud
unde ipse idem T. supius se modo que-
rit, Alsq; hoc quod p̄d T. R. est culpa-
bilis de transgr̄ ill' infra p̄d Burgum
Warr vel alibi extra p̄d Civie Co-
nvente, Et absq; hoc qd p̄d T. R. est
Cul de t̄nsgr̄ ill' p̄d primo die April' seu
ad aliquod al' tempus anteqm̄ idem
T. R. fuit un̄ Dic Comd Civie p̄d seu
postq̄m idem T. R. ab offic' ill' amotus
fuisset put ip̄d idem T. R. supius inde
querit, Et hoc (Ec.) An-
de (Ec.) Quer Denuer, Et Def' jung
in moxat.*

Traverse of
Time and
Place.

1. Traverse.

2. Traverse.

Defendant justifies by Sheriff's Warrant,
and traverses.

Simile.

ff. **A**bsq̃ hoc qđ pđ ff. est culpabilis
de aliqua verbatōe & insultu
ante pđ vicesimū diem Octob anno su-
pradio seu ad aliquod tempus postea,
Et hoc (Et.) Unde (Et.)

Several Tra-
verses in one
Plea.

In some Cases there are several Traverses to
be taken in one Plea; as, he that is to traverse
an Office, ought to avoid or traverse every of
the King's Titles alledged.

The Defendant in Trespass did plead a
Gift in Tail to his Father, and gave Colour
and the Plaintiff made Title by a common
Recovery; to which the Defendant did rejoin
That his Father before the Recovery made
a Feoffment, and took an Estate back again
and then after the Recovery, and before Exe-
cution, died: Absq̃ hoc, That the Reco-
verer enter'd in the Life of his Father; &
absq̃ hoc, That his Father had no other
Estate tempore Brevis; Et absq̃ hoc
That the Recoverer was as in the Recovery
specified, &c. and it was admitted. *Vi*
12 Ed. 4. 14, & 19.

Traverse,
when good.

If one will take a Traverse to a Decla-
tion, he ought to traverse that Part of it, the
the Doing thereof will make an End of the
Matter, for which the Plaintiff declares, and
then is the Traverse good.

Not needful.

Where the Defendant hath confessed, and
avoided all the Matter that is contained in the
D

Declaration, there he need not to take a Case.
Traverse.

Where the Defendant hath given a parti. Plea answer-
lar Answer in his Plea to all the material ed.
Matters contained in the Declaration, there
he needs not to take a Traverse; for when the Traverse not
Thing is answered, there needs no further De- needful.
ial, which is the Nature of a Traverse.

As to those Words in the Traverse, *Modo* *Modo & forma*
forma put; first, it is to be known that *prout, &c.*
the Words *Modo & forma* in Pleading are
sometimes but Form, sometimes an essential
part and Substance of the Issue.

Where the Issue taken by it self goeth to the When Words
point of the Writ or Action, there *Modo &* of Form.
forma are but Words of Form.

But it is otherwise when a collateral Point When mate-
Pleading is traversed. — As if a Feoff- terial upon
ment be alledged by two, and this is traver- collateral
ed *Modo & forma*, and it is found the Point.
feoffment of one, there *Modo & forma* are
material.

So if a Feoffment be pleaded by Deed, and
is traversed *Abſq; hoc qđ feoffabit mo-*
& forma; upon this collateral Issue, *Modo*
forma are so essential, as that the Jury Essential.
cannot find a Feoffment without Deed. Co.
281. b.

And there is another Diversity to be obser- When only
d, viz. That though the Issue be upon a col- Words of
lateral Point, yet if by finding of Part of the Form upon
ue it appears to the Court that no such a collateral
ction lies for the Plaintiff, no more than if Point.
e Whole had been found, there the Words
Modo & forma are only Words of Form.

Case.

Co. Lit. 281. *b.* 10 *Ed.* 4. 7. 18 *Ed.* 4. 8
21 *Ed.* 4. 3.

Traverse puts
the Manner
and Matter
in Issue.

2 *Roll.* 708. Where a Traverse is with
Modo & forma, &c. that will put the Man-
ner as well as the Matter in Issue, where the
Manner is material, as the Time, the Fact
and other Circumstances, when they are the
Effect of the Issue.

Negative
Pregnant.

And many Times where the Party makes
no Traverse, his Plea is called a Negative
Pregnant, and therefore ill.

For a Negative Pregnant is a Sort of Con-
fession of an Affirmative; as if a Man being
impleaded to have done a Thing upon such a
Day, or in such a Place, denieth that he did
it *Modo & forma declarata*; this implieth ne-
vertheless that in some Sort he did it. *V.*
Dyer, fo. 12. nu. 95. Kitch. fo. 232.

*Modo & forma
declarata.*

Ought to tra-
verse one or
other.

In Trespass, the Defendant justified by
Licence from the Plaintiff's Son: Plaintiff replied
Quod non intrabit per licentiam suam; this
is called a Negative Pregnant, for he ought to
traverse the Licence by it self, or the Entry
it self. 2 *Cro.* 87.

Two Matters
in one Plea.

So when two Matters are put in Issue
in one Plea, and for the Incertainty upon which
of the Matters the Defendant doth insist, the
Plaintiff cannot tell in which to join Issue; this
is a Negative Pregnant.

Exempl' neg-
ligent keep-
ing of Fire.

And it was said in an Action on the Case
for burning the Plaintiff's House by negligent
keeping of his Fire. The Defendant pleaded
that the House was not burnt by him in the
fault of well keeping of his Fire. That his
Plea is a Negative Pregnant: First, That

How

House was burnt. Secondly, That it was not
in Default of well keeping. *Sed quære,*

H. 6. 7.

In Trespass for cutting of Trees, the De-
fendant pleaded the Commandment of the
Lessor to cut the Trees, and give them to a
 stranger. The Lessor replied, That he did
not cut the Trees by his Commandment; it
was held a Negative Pregnant: Whereupon he
made his Replication, and said, That he
did not command him, 21 H. 6. 46, 37. *Vide*
H. 6. 7. *Bro. Trav.* 325.

Command-
ment to cut
Trees plead-
ed.

For Goods imbezelled in Default of an Inn-
keeper, he pleaded, They were not taken in his
Default; and held a Negative Pregnant, and
that he ought not to plead the special Matter.
H. 6. 38, 39.

Special Mat-
ter to be
pleaded.

If Defendant pleads, That the Beasts died
in Pound overt in Default of the Plaintiff; and
the Plaintiff replies, *Abson hoc*, that the
Beasts died in his Default generally, 'tis a good
plea; but if he says, *Abson hoc*, that they
died in the Pound overt, it is a Negative
Pregnant, 5 H. 7. 9.

Beasts died
in Pound
overt.

But it seems that the Defect of a Traverse
is only Form, and if the Defect
is not shewn by Demurrer, it is avoid-
ed by the Statute. 1 Cro. 324. 1 Leon. 44.

Defect of tra-
verse helped.

It is said to be a general Rule, that where
a Thing alledged doth confess and avoid my
plea, I may traverse it, 7 H. 6. 13 *Eliz. Dyer.*

Rule to tra-
verse.

If a Traverse concludes to the Country, it
is good to demur specially, and shew it.

Concludes to
the Country.

It is said, Matter of Supposal ought to be
pleaded by Matter impleaded, without any
Traverse.

In

Case.
Ancient Dem-
mesn Matter
of Supposal.

In a *Præcipe quæ reddat*, ancient Dem-
is a good Plea without a Traverse, beca-
'tis only Matter of Supposal, 5 H. 7. 13.

Place of ma-
king Bond
Matter of
Supposal.

In Debt upon Bond, the Plaintiff said, that
the Bond was made at B.; 'tis a good Plea
for the Defendant to say, that the Bond
made at S. p. *Dures* without any Traver-
se, because 'tis only Matter of Supposal
22 E. 4. 40. a.

Time of Age
Matter of
Supposal.

In Debt, the Plaintiff said, that the Bond
was made by the Defendant, being at full Age
at the Time of the making thereof; in
Case the Age is not traversable, because
only Matter of Supposal, 15 Ed. 4. 32.

When no Ne-
gative comes
before.

If no Negative comes before, an Affir-
mative will serve without an *Absoq hoc*; as
Plaintiff that appears may say, *J. S.* that ap-
pears is *J. S.* of D. and the Party sued is
tended to be *J. S.* of C. without any Traver-
se, 33 H. 6. 10.

One Traverse
enough to
make a per-
fect Issue.

If a Tenant does first take his Traverse
the Demandant ought not to take his Traver-
se, for one Traverse is enough to make a
perfect Issue: But where all the Tenants
plead jointly with a Stranger, they may
take any Traverse. But 'tis otherwise where
two make Default, and the other two plead
it, 34 H. 6. 16, 17.

Traverse up-
on Traverse.

Yet in some Cases it's said there may be
Traverse upon a Traverse, as 9 H. 6. 1, 2,
where in a *Præcipe* against two, one pleads
Non tenure, and the other Jointenancy with
a Stranger, and traversed, *Absoq hoc*,
the other had any Thing. And the Plaintiff
replied, That the Defendants are Tenants

Writ supposeth; and traverseth, *Abſcon* Case.
that the Stranger had any Thing.

Trespas by two, the Defendant said Plaintiff says
one of the Plaintiffs is dead; 'tis no Plea Defendant is
the Plaintiff to say that he is alive, with- alive and not
traversing that he is not dead, 35 H. 6. 50. dead.

The Defendant justified in another Vill in Vill.
same County without Traverse, and it
good, 35 H. 6. 50, 51.

An Issue be joined upon a Negative, there Issue joined
to be no Traverse; as where the Issue upon a Ne-
that the Plaintiff was there to receive the gative.

they, and the Defendant was not there to
'tis sufficient for the Defendant to say
he was present there, and he need not
traverse, *Abſcon* hoc, that the Plaintiff was No Traverse.
36 H. 6. 15.

Debt against one as Executor, 'tis no Traverse that
to say that he died Intestate, without tra- he made him
ving that he made him Executor, because Executor.

might first make him Executor, and after-
die Intestate, 7 H. 6. 13, 14.
in Conspiracy, to justifie by a legal Con- Conspiracy.

cy without Traverse is not good.
the Defendant alledge a certain Place in Place in Bar
ear, the Plaintiff ought not to traverse it not to be tra-
is Replication: But 'tis otherwise in Re- versed in
m, for the Plaintiff in Replevin ought to Repl.
traverse the Place alledged by the Defendant Execution in
is Avowry, 22 E. 4. 50. b. 51. a. Replevin.

That two Affirmatives in Pleading Affirmative,
not make Issue; and therefore, where one one must be
g seised in Fee is alledged by the De- traversed.
ant, and the Plaintiff alledges one dying
in Tail, he ought to traverset he Dying
in

Case. in Fee; and so it ought to be in all
Exception in unless in an Affize, or Writ of Entry
Affize. the Nature of an Affize, 5 H. 7. 11, 12.
 18 H. 6. 8, 9.

Defendant The Defendant says, The Plaintiff
ought not him 26 Acres, and 4 Acres more, with
to traverse that, that he demised him 26 Acres
where he 'tis said the Defendant ought not to traverse
confesses but the Plaintiff, 29 H. 8. *Dyer* 320.
more. 1 *Saund.* 207, 209.

Two Villis in In Battery in two Villis, Justification in
one County. one without traversing the other is sufficient
 if both were in one County, 20 H. 6.

Full Age If one aver the Defendant of full
averr'd. he need not traverse, and not within
 19 H. 6. 54.

Considera- A Consideration averred to an Use is
tion. traversable, and it is issuable, 4 H. 7. 9. 6 Ed.

Assumpsit. Yet the Consideration in an Assumpsit
 is traversable, but the one Issue must be pleaded
 and the Consideration given in Evidence
Het. 59. *Sed vide Hob.* 128. 1 *Cro.* 201.
 373. where 'tis said it may, if it be necessary.

Ratione cuius The Words *Ratione cuius* in Pleading
not traver- are not traversable, 11 Co. 106.

Causes of Re- The Cause of refusing a Clerk is
fusal. fusal, because the Proceedings are not
 in record, 5 Co. 57.

Letters Pa- Letters Patents pleaded, or shewn under
rents. Great Seal, cannot be denied, 6 Co. 15.

Intrusion. In Intrusion, the Intrusion is traversable
 3 H. 7. 7.

Feoffment to A Feoffment alledged to Persons unknown
Persons un- is not traversable, but the taking of the
known. fits, 4 H. 7. 9. *Vide* 5 Co. 77. a.

Trespals where both the Plaintiff and Defendant claimed a Sale, the Time of the Sale and not the Day of the Sale, was traversable, 21 H. 6. 40, 41.

Case.
Time and not the Day traversed.

one pray Aid of the King, the Cause is traversable, 28 H. 6. 4.

Aid of the King.

nothing in the *Alias dictus* is traversable, 22 H. 6. 28.

Alias dictus.

Detinue of Charters, where the Defendant does not confess any Possession in Plaintiff, the Bailment is not traversable, 6. 42.

Bailment in Detinue.

the Writ suppose one died Intestate, it is not traversable, the Defendant may traverse, and say he made a Will, 7 Eliz. Dyer 236.

That he made a Will.

said for a Rule, That that which comes *Nuper* is not traversable, if that the Defendant be not charged by Vertue of his Office, as said in pleading, *Nuper Viceromes*, or *Escheator*, 38 H. 6. 18.

Nuper Vic,
&c.

matter not alledged in the Count ought not to be traversed, 28 H. 6. 35.

Matter not in the Count.

Release alledged in Pleading was traversable, and not the Disseisin, 30 H. 6. 7.

Release traversed.

Trespals where the Defendant justified by Commandment, the Plaintiff traversed the Commandment, and pleaded a Lease at Will made by the same Person, and good, 6. 7.

Commandment.

Partitione facienda 'tis a good Traverse, That they held not the Lands in Common, 29 H. 6. 19.

Partition.

one justify for Common appendant, the Plaintiff ought to traverse the Common, and not as the Defendant alledged, 3. 10. b.

Common appendant.

When

Case.
* Traverse
general and
special.

* Seisin tra-
versed.

Dying seised,
or Abate-
ment.

Dying seised,
Conveyance,
or Disseisin.

Seisin in Fee.

Aliquo modo.

Conveyances,
when and
what.

Time tra-
versed.

When a general * Traverse sufficeth, &
verso, *Vide* 8 *Ed.* 4. 3. 32 *H.* 6. 6.

When the * Seisin shall be traversed,
when the Tenure, and when not.
F. N. B. 209. *a.* 5 *Ed.* 4. 6, 9. 10 *H.* 6.
20 *H.* 6. 20. 4 *Co.* 11. *a.* 6 *Co.* 24. *b.* W
the Dying seised, or Discent, 19 *H.* 8. *Br*
verse 6. 22 *H.* 7. 31.

Where the Dying seised, or Abatement
verfable. *Vide* 18 *Ed.* 4. 1. 26. 5 *Ed.* 4. 13
3 *H.* 7. 7. 39 *H.* 6. 26, 27. 38 *H.* 6. 22.

Where Dying seised, Conveyance
Disseisin, traversable, *vide* *Dyer* *Eliz.*
5 *Ed.* 4. 5. 15 *Ed.* 4. 22. *Bro. Tit.* 218
30 *H.* 6. 7.

Where Seisin in Fee alledged sh
traversed, *vide* 26 *H.* 8. 4. 11 *Ed.*
33 *H.* 6. 49. 5 *Ed.* 4. 1. 18 *Ed.* 4. 3. *Br*
verse 372. *Dyer* 365.

Of Traversing by the Words, *Aliquo*
modo, See 22 *H.* 6. 35. 5 *Ed.* 4. 119. 4 *Ed.*
13 *H.* 6. 13.

When one ought to traverse the Co
ances, and what Conveyances, and e
vide 43 *Ed.* 3. 7. 22 *Ed.* 4. 29. *b.* 5 *Ed.*
163. *a.* 134. *b.* 33 *H.* 6. 38. 9 *H.*
2 *H.* 7. 8. 10 *H.* 7. 8. 2 *Ma.* 107. 6
27 *H.* 8. 2 & 3. 15 *H.* 7. 2, 3, 11.

When the Traverse ought to extend
to the Time after the Day alledged
Pleading, as before, and e convey
5 *Ed.* 4. 12. 124. 21 *Ed.* 4. 66. *b.* 12 *Ed.*
21 *H.* 6. 40. 22 *H.* 6. 49. *b.* 50. *a.* 3
33 *H.* 6. 13. 13 *H.* 6. 1, 3. 19 *H.*
37 *H.* 6. 37.

Traverse.

331

The Defendant *traversed the Day where it was not material, and yet the Plea allowed, *Saund. Rep. 14.*

Whether a || Traverse may be taken after a Traverse, or not. *Idem 21, 22, 23. Saund. 5. 28.*

*A Matter sufficiently confessed and avoided shall not be traversed. 22, 23.

Where the Plaintiff counts of one Demise, and the Defendant pleads another different Demise, he ought to traverse the Demise in the Count. *Idem 207, 209.*

Where the Surplusage which is mentioned in the Plea of the Defendant, and not supposed by the Declaration, shall be traversed by the Plaintiff, and where not. *Idem 207, 208, 209.*

Where the traverse ought to come on the Part of the Plaintiff, and where on the Part of the Defendant. *Idem ibid.*

Where the precise Traverse of the entire Time makes the Plea ill. *Idem 269.*

The Defendant confesses and justifies the Act, and yet traverses, *Absoq hoc*, that he had done it aliter aut alio modo qm sic pferitur. *Quere*, If a good Traverse. *Idem 312.*

Where the *Ratione tenure* ought to be traversed, and not the Encroachment, 2 *Saund. 161.*

Where the Plaintiff, by alledging more than ought in his Declaration, gives the other Party Advantage to traverse it. *Idem 206.*

Case.

* Traverse of Day immaterial, and allowed.

|| Q. of a Traverse upon a Traverse.

* Matter confessed and avoided.

Demise in the Count.

Surplusage in the Plea.

Where on the Part of the Plaintiff or Defendant. Entire Time.

Justification and Traverse.

Ratione tenure, Encroachment.

Advantage of Traverse.

Where

Case.
Where in the
Disjunctive.
Aliter.

When the
Day ought to
be traversed.

Where the Traverse ought to be in Disjunctive, and not in the Conjunctive. *Idem* 206, 257.

Where in an Action for Damages only, Defendant traverses in the Disjunctive the several Losses alledged in the Declaration, may give in Evidence any Matter to excuse himself of any of them. *Ibidem* 207.

Where in Trespass the Day ought to be traversed, and where not. *Idem* 295.

In Battery, *Absoꝛ hoc qđ immoderate castigabit*, is no direct Traverse to the Defendant's Justification, yet good after Verdict *Ventr.* 70.

A Traverse designed to bring a collateral Matter in Question not allowed. *Idem* 77.

The Plaintiff replies, That the Action commenced for another Cause, and not for the same; *Absoꝛ hoc*, that it was for the same, and good upon special Demurrer, because it puts the Matter more singly in Issue.

For the Defendant to traverse Matter alledged, good Cause for the Plaintiff to demur. *Idem* 79.

Where a Traverse that might have been omitted is Cause of Demurrer. *Idem* 212.

A Traverse is impertinent where the Matter is confessed and avoided. *Idem* 283.

The Plaintiff by Replication says, He was arrested upon a Bill returnable *die Sabbati & non die Veneris*. Defendant replies, That he was taken upon a Bill returnable *Veneris*; *Absoꝛ hoc*, that he was taken *virtute Bille ret' die Sabbati*. Plaintiff demurr'd, and his Council said it was a Traverse upon a Traverse, for that the

non die Veneris by the Plaintiff was a traverse: The Defendant said, It was not such a Traverse of which the Books speak, that a Traverse may not be taken upon a Traverse, and that the die Sabbati was only traversable and triable. The Plaintiff had nevertheless Leave to continue, notwithstanding the Demurrer and Argument, because the Defendant would not agree to accept Issue upon the Traverse, nor put in Bail upon the Original Action. *Vide 1 Lev. 192.*

It was held an ill Traverse, That the Court was held coram Majore, according to Custom, which was Matter of Record, and not triable per Pais, and also joining Matter of Custom with it which is triable per Pais. It was also held a Fault where the Traverse made the Day Part of the Issue. *Idem 193.*

The Sheriff upon justifying arresting a Man in Breach of the Peace, traversed all the Time before he was Sheriff or after, and held good, tho' it was objected to be too large. *Idem 216.*

A Fact laid 1 Nov. and justified the 2d of November, *que est eadem*, held good without traverse. *Idem 241.*

That which comes after the Word [*scilicet*] was held not to be traversable. *Idem 245.*

Debt upon a Lease of Four Acres; Defendant pleads, that the Lease was of Five Acres, and an Entry into the Fifth: He ought to traverse the Lease *de quatuor Acris tantum*, *Idem 263.*

In Trespass for chasing his Cattle, *Ita quod* one of them died, held that what was after

Y

the

the *Ita quod* for Aggravation of Damage need not be traversed. *Idem* 282.

Defendant justifies taking the Goods Damage fefant after the Quarter demised was expired, and traversed he took of them the 9th of *October*, or any Time within the Quarter. Plaintiff replied, *De injur sua propd absqz illi Causa*. The Replication on the Demurrer was held ill, the Plea in Bar containing Title; but the Traverse was held ill, and Judgment for the Plaintiff. It seems he should have traversed the 9th of *October*, or any Time before the 23d of *July*, or during the Quarter of the Year. *Idem* 307.

Idem 2 Part 81. In Trespass it was said, A
Issue upon the Traverse would be unprofitable
and that it ought to have been before the
Testæ of the Writ, or after the Return, &
non allocatur, for the Traverse was
Prejudice of the Defendant, and not of
Plaintiff.

See Traverse after a Traverse upon an indictment for not repairing a Bridge, Issue on the last Traverse, and Defendants found guilty upon the first. 2 Lev. 112.

Abſq; hoc aliter vel alio modo vel
bi, Iſſue thereupon, and Verdict, and qu
ed for the Incertainty. *Idem* 164.

The Defendant pleads 23 H. 6. and says
was imprisoned by a Writ retornable Quin-
den Martini. The Sheriff by Replication
shews a Writ retornable Otavi, and traverses
the Writ retornable Quinden Martini.
The Court upon Demurrer held the Traverse
well enough, being a Traverse of the matter.

material Thing pleaded in Bar to avoid the Bond. *Idem* 174.

Error of a Judgment in an inferior Court, for that the Judge had not taken the Oaths, &c. The Defendant pleaded the Oaths, and Declaration was not tender'd to the Sheriff; the Plaintiff demurr'd. The Court held clearly that the Tender was traversable. *Idem* 243.

The Defendant made Conusance as Bailiff of J. S. in Replevin: Plaintiff in Bar says, He took the Distress without the Command of J. S. who had first Notice thereof such a Day, and then disavowed the Taking. Defendant demurred generally, and the Court held the Bar ill; for he ought to have traversed his being Bailiff, and it was ruled to replead to and amend his Bar, paying Costs, and to go to Trial, If Bailiff or not. *Vide* 3 Lev. 20.

Adjudged, a Traverse of Day and Place was multifarious, and that he ought to have traversed one sole Point, and not both alike. *Idem* 41.

It was held in Trespass, That the Traversing the Command of the Bailiff to prevent a Rescue was ill, for the Defendants might do well enough on their own Head to prevent a Rescue, being a Breach of the Peace. *Lev.* 113.

Idem 167. It was held, That the Traverse contain'd more than was alledged in the Breach, scilicet secundum veram intentionem, and that the Intent of the Indenture is not traversable.

In Trespass for five Loads of Hay, the Defendant justified for Tythes; the Plaintiff traversed the Quantity of the Tythes, and held

Case.

Case.

ill upon Demurrer, the Quantity being not traversable. *Idem* 228.

In Count upon a Writ of Waste, the Plaintiff entitled himself to the Reversion by Discent. The Defendant pleaded in Abatement, that his Title was by Devise, &c. and then traversed the Discent, and held good upon a general Demurrer. *Vide* 2 *Lut.* 1558.

Idem 1632. It is said to be a Rule in Law That when particular Estates are in Dispute the first, and not the last, ought to be traversed. *Vide* 2 *Vent.* 212.

Idem 2 *Lut.* 1287. It was resolved, That the Traversing of the Delivery of a *Ca' Sa'* the Sheriff was not material, as 2 *Lev.* 19. For if in Truth a Writ be sued out, altho' the Sheriff makes a Warrant before it comes to his Hands, 'tis legal, and the Precedents are both Ways. 1 *Saund.* 299. where it shall be intended that the Writ was delivered before the Arrest.

Defendant justifies as being seized of the Tythes, entering the Close to take Five Loads of Tythes sever'd. *Repl'*, *De injur sua prop'*, and traverses that the Five Loads of Tythes were sever'd. Demurrer with Cause and Judgment that the Bar was well pleaded and that the Traverse was ill. *Idem* 1313, 1314. *Vide* 3 *Lev.* 228.

Defendants justify putting their Cattle in the Field, and plead that they escaped in the Plaintiff's Closes for Default of Inclosure whereupon they enter'd and chased them out. *Repl'*, *De injur sua prop'*, with a Traverse of the Escape, *Modo & forma*. Upon Demurrer the Traverse was held good.

2 *Lut.* 1437. Held that in transitory Actions, for Battery and taking of Goods, the Plaintiff may alledge the Tort done, not only in any other Vill, but also in another County, and the Place may not be traversed without special Cause of Justification, which extends to some certain Place. Also that if the special Matter alledged by the Defendant in a foreign County be false, the Plaintiff may maintain his Action, and traverse the special Matter alledged by the Defendant, and a Traverse in such Case may be upon a Traverse, when a Traverser is used to oust the Plaintiff of the Benefit which the Law gives him. 3 *Cro.* 99. *Sho.* 350. 1 *Institut.* 282. b.

Defendants in Battery justifie arresting the Plaintiff upon a *Capias ad respond.* and that he assaulted them, &c. Repl', *De injuriis* a prop^d absq^e illi Warranto, Et hoc est, &c. The Defendants upon their Demurrer said, The Traverse ought to be Absq^e hoc et fuit tale Warrantum. Sed non aliter. And Judgment pro Quer, because it was not shewn in the Bar out of what Court a *Capias* issued. 2 *Lut.* 1458, 1460.

Idem 1471, & 1479. Demurrer, for that the Defendants in Trespass had traversed Matter not traversable: Judgment that the Traverse was ill, and also that the Bar was ill, because the Plaintiff pleaded that the Bailiff had appointed a Number of Trees to be cut for Repairs. *Judic* p Quer.

Where Death ought or may be traversed. *Lut.* 14.

If one pleads good Matter, but does not rely upon it, but makes it only an Inducement

Traverse.

to other Matter, it will not avail him, and he thereby gives Liberty to the other Party to traverse the last Matter. 1 *Lut.* 108.

Where the Sufficiency of Common may be traversed. *Idem* 107.

In Debt for Fees of Knighthood, in the Count it is alledged that the Defendant voluntarily took upon him the said Degree of Bar, That he took it in sole Obedience to the King's Command; ill without a Traverse. *Idem* 380, 381.

In an Action for an Escape, the Plaintiff declared upon a voluntary Escape: Bar, That he retok the Prisoner upon fresh Pursuit, and held good, without a Traverse of the voluntary Escape. *Idem* 382.

When the Defendant by a Traverse in Replication locks upon the Defendant so that he cannot rejoin, held ill upon Demurrer. Also the Bar ill, and the general Rule is, That Judgment shall be against him that commits the first Fault, yet it is said not to be so in the Case of an Award pleaded. *Idem* 529. 2 *Bul.* 28. & *Godb.* 255.

Where one need not traverse a Seisin in Realty found by Inquisition upon an Outlary of Treason to be in the King. *Idem* 1008.

In Trespass for Battery at H. Defendant justifies *per mollior manus imposuit*, in defence of the Possession of his Close in Count and Replication, That in the Close there was a War by Permission, by which he enter'd, and the Plaintiff violently assaulted him, *Abson quod mollior manus imposuit*, held ill, to be no Departure, and the Traverse adjudged good. 2 *Lut.* 1435, 1437. *Vide ante.*

Where the Traverse of the Jurisdiction of an inferior Court will not hurt upon a general Demurrer, &c. *Idem* 1560, 1563.

Where the Inducement to a Traverse may be traversed. *Idem* 1630, 1632, &c.

Bar sur Assumpsit.

Et p^{re}dict' T. B. p^{ro} Altorum suorum vendit & defendit vim & injur quando, &c. Et quoad p^{re}dict' sexdecim libras novem solidos & octo denarios de debito quos p^{re}dict' W. virtute prime promissionis & assumptionis p^{re}dict' superius versus eum exigit dicit quod ipse non Assumpsit super se modo & forma put p^{re}dict' W. superius versus eum queritur, Et de hoc pondus se super priam, Et p^{re}dict' W. inde similiter, Et quoad p^{re}dict' undecim libras quas p^{re}dict' W. p^{ro} Cannabe eidem T. delibari suppositis virtute secunde promissionis & Assumptionis p^{re}dict' superius versus eum exigit dicit quod p^{re}dict' W. Actionem suam p^{ro} inde versus eum habere seu manutenere non debet, Quia dicit quod p^{re}dict' duodecimo die Novembris Anno Domini Millesimo sexcentesimo nonagesimo primo quo die supponit Canabem p^{re}dict' eidem T. delibari quidam J. W. de Wapping in Parochia de Stepney in Com^{itatu} Midd^{lesexie} Sailmaker indebitatus fuit eidem T. in (&c.) legalis monete Anglie p^{er} funibus (Anglice Bolt-Ropes) p^{re}fact' J. W. p^{er} eundem T. antea vendit, Et sic indebitatus existens p^{re}dict' J. W. colloquium fuit cum p^{re}fact' W. de Cannabe p^{re}dict' eidem T. in Satisfactione debiti sui p^{re}dict' delibatus

To a Declaration upon two Promises: Defendant pleads to the first, *Non Assumpsit*: To the second, That the Plaintiff by Agreement delivered the Goods in the Name of a third Person to the Defendants, for and in Satisfaction of Money to him due by the third Person.

Case.

band super quo postea scilicet eodm̄ duo-
decimo die Novembꝝ Anno Dñi Mil-
lmo sexcentesimo nonagesimo primo su-
pradicta apud London̄ pdicta in Parochia
& Warda pdictis pdicta W. per agre-
mentu inter ipsum & prefat J. P. ha-
bit delibavit eidm̄ T. Cannabem pre-
dicta in nomine predicta J. P. in satis-
factionem debi sui pdicta absq; aliqua
Conditione & absq; aliqua pmissione seu
Assumptione p ipsum T. hic vel facta
solvend p Cannabe pdicta W. tant pe-
cunie quane ipse pinde mereretur her-
put pdicta W. p Narrationem suam pre-
dicta superius allegavit, Et hoc idem
T. parat est verificare unde petit judi-
ciu si pdicta W. Actionem suam pdicta in
de versus eum here debeat, &c.

Bar sur Assumpsit.

*A' Cas' de
averiis empt'.
Bar', 2d' def'
solvit partem
& vellet sol-
vere resid' si
quer' voluisset
deliberare ave-
ria.*

Action non, &c. Quia die qd bene
verum est qd ipse idem S. Assump-
sit super se modo & forma put pdicta W.
p Narrationem suam pdictam superius
suppon, Unde pdicta W. similie deli-
bavit eidem S. pdicta tres Bobes
Narre pdicta mentionat sed pdicta S. ul-
terius die qd ipse idem S. solvit pdicta
W. p pdicta bobus Summam quindecim
librarū legis monete Angl pcell pdicta
trigine Librarū & post pmissionem & As-
sumptionem ipsius S. pdicta in forma pdicta
facta parat fuit ad solvend summam
quindecim Librarū pdicta triginta lib-
resid si pdicta W. Vaccas pdicta ad vo-
ant

ante p̄dictū festū A. in Pace p̄dict' men-
 nat' deliberare voluisset quas quidm
 vaccas p̄dict' S. eundem M. ante p̄re-
 dict' festū A. deliberare requisivit sc̄dm
 agreementū p̄dict' sed p̄dict' M. Vaccas
 eidem S. ante p̄dictum festū A. vel
 p̄ idem festum deliberare omnino recu-
 sit. Absque hoc qđ p̄dict' M. usque
 ad p̄dict' festum A. parat' fuit & ob-
 tulit deliberare eidem S. Vaccas p̄dict'
 p̄dict' M. per Narratōem suam
 eandem superius suppon, Et hoc (Ec.)
 de, Ec.

(Preludi non, Ec.) Quia protestando
 p̄dict' S. non solvit eidem M. sum-
 mam quindecim librarū pro bobus p̄re-
 dict' prout p̄dict' S. superius p̄litando
 petebat pro placito idem M. ut p̄ius
 qđ idem M. a tempore p̄missionis
 assumpsit p̄dict' S. p̄dict' usq; & ad
 festū A. parat' fuit & obtulit
 deliberand' p̄fac' S. Vaccas prout ipse
 Pace suam p̄dict' superius suppon,
 hoc petit qđ inquiratur p̄ p̄iam, Et
 p̄dict' S. similiter, Ec. Id, Ec.

Vide Bro. Red. 93. Bro. Vad. 107.

Bar.

Protestando qđ
 Def' non solvit
 partem pro pla-
 cito dic' qđ
 Quer' parat'
 fuit & obtulit
 ad deliberand'
 vaccas prout,
 Ec. Exit' su-
 perinde.

ando (Ec.) Et idem D. protestando
 qđ p̄dict' sepe rat' p̄missionem & as-
 sumptōem in Pace p̄dict' superius speci-
 ficat' sunt pro una & eadem causa actōis
 non pro diversis pro p̄lito idem D.
 quoad recep̄tōem p̄dict' S. uxoris
 D. & p̄dict' A. H. servien' ejus-
 dem S. p̄dict' M. T. in domū suam
 tiam indenien' & providen' p̄dict' ci-
 bum

Bar.

Pro esculent'
 invent' pro
 uxore Def' qđ
 quoad talem
 diem non as-
 sumpsit & po-
 stea uxor' ab-
 sentavit contra
 volunt' Def' &
 Def' noticiam
 inde dedit.

Case.

hum pot' lea' labacoñ ignem & ar' nec
 sar p' sustentacoñe & manutentacoñe p'd
 S. & J. a p'dia' (tal' die usq; &c.)
 ipe non assumpsit, (&c.) Et quo
 resu' p'dia' temporis quo supponi
 p'dia' W. recepisse p'dia' S. & J. in
 m'd i'p'ius W. ac etiam invenisse & p
 vidisse cibū pot' lea' labacoñ ignem
 ar' necessar' p' sustentacoñe & manu
 tēd i'p'ia' S. & J. a p'dia' (tali
 usq; &c.) in Parr' p'dia' sup'ius spe
 rat' idem D. dicit qđ Acco non
 quia die qđ ante p'dia' diem (&c.)
 die (&c.) apud (&c.) p'dia' S. uxor i'
 D. sponte sua & sine aliqua rōna
 causa & absq; consensu & contra vo
 tat' i'p'ius D. seipam absentabit
 consorcio & societate i'p'ius D. elong
 Qd'q; ipe idem D. sup'inde ipam
 redeund' & cohabitand' cum eodm
 adtunc & ibm fidelit' requisivit &
 menter sollicitabit p'dia' tamen
 redeund' & cohabitand' cum eodm
 mied' & denegand' idem D. superind
 stea scit (tali die, &c.) apud L.
 publice & pal' declarabit significat
 notie fecit omni' person' quibuscun
 ipe idem D. nullo modo solveret ne
 qualit' satisfaceret vel satisfieri co
 ret aliquam summam vel summas
 net aliquibus p'sone vel p'sonis qui
 darent & crederent p'lat' L. p' aliqu
 mercimoniū bonis vel pecuniarum
 mis quibuscunq; de quibus quidem
 missis p'dia' W. adtunc & ibm scit
 dia' die (&c.) apud L. p'p'dia' not

Et hoc (Ec.) Unde (Ec. Vide Bro.
ed. 95. aliter Id. 96. — Defendant pleads
tender of 10 s. for Diet and Lodging, as be-
ing sufficient for the same, which the Plaintiff
contended, Bro. Vad. 89. That he gave the Plain-
tiff's Wife Diet Part of the Time, and was
ready for the Remainder; but that the Plain-
tiff took his Wife from his House, p qd he
could not perform, 1 Repl Protestando
non abduxit & plico non dedit uxori escu-
sam, Ec. Et Issue. Id. 112.

Et p dia' Thomas Johnson p C. B.
Actoꝝ suu vend & defend vim &
injuriā quando, Ec. Et die qd p dia'
Thomas Kemp actionem suam p dia' in-
stituit eum here seu manutenere non
debet, Quia die qd post pmissionē & as-
sumpionē p dia' scilicet septimo die Junii
anno regni dicti Dñi Regis nunc quar-
tus apud London p dia' in Paroch &
Warda p dia' quidam Adamus Long
Thomas Kemp (modo quer) Ricardus
Willelms Edm̄s Bromley Willms Lock
Ricardus Canner p quoddam scriptum
factum apud London p dia' in Pa-
roch & Warda p dia' sigillis suis sigil-
latis & p ipsum Thomam Johnson hic in
cur plac̄ cujus dat̄ est eidem die & an-
te recitando qd cum p dia' Thomas
Johnson tunc indebitat' fuisset p fac̄
Thome Kempe (modo quer) Ri-
cardo Edm̄o Wilko & Ric̄o sepatim in sepa-
tis denariis sumis quas p dia' Thomas
Johnson tunc satisfacere nequit ra-
tione multoꝝ dampnoꝝ & impedimentoꝝ
rum

A special Let-
ter of Licence
pleaded to an
Action of the
Case brought
upon a Pro-
mise.

Case.

rum p ipm C. J. antetunc susten-
 multoꝝ debitoꝝ ipsi C. J. tunc de-
 & insolue que subito p ipm C. J. re-
 non potuer, Et ulterius recitando
 scriptum illud p ipsum C. J. hic
 Cur ut pfertur plac qd pdia' C. J.
 nificasset pdia' Adamo Thome
 (modo quer) Nicho Edzo Willo &
 desideriu & voluntatem ad satisfaci-
 & cum ipis colloquend ut eis ma-
 distince Condiçionem suam ostende-
 Et quomodo & quando sepalia deb-
 pdia' ipsis pdia' Adamo Thome
 (modo quer) Nicho Edzo Willo &
 satisfacere posset, Et ideo aliqd tem-
 licentie petiisset (in quo magis tut-
 libe semetipm pfat Adamo Thome
 (modo quer) Nicho Edzo Willo & Nicho
 plicare & negotium suum ppium in-
 dere posset ulterius testatu est p
 tum qd pdia' Adamus Thomas (mo-
 quer) Nichus Edzus Willus & Ri-
 considerantes qd dia' C. J. p res-
 çionem libtatis sue & amission vocaço-
 sue minus sufficiend foret ipis pdia'
 damo Thome (modo quer) Nicho E-
 Willo & Riço satisfacere qm fuit
 poze sigillaçonis scripti pdia' p ip-
 C. J. hic in Cur ut pfertur plac de-
 sent & concessissent & in & p script-
 pdia' (quantum in illis fuit) deder-
 & concesserunt plac C. J. plenam &
 ham libtat veniam & licenciam tam
 eundi & redeundi ad & a pdia' Tho-
 (modo quer) ac pdcis Adamo Tho-
 Edzo Willo & coꝝ quolibet qm cum

niendi transeundi & redeundi in & cir-
 opus & negocia sua p̄dicta aliquibus
 quibuscunq; infra Regnū Anglie
 oriescunq; p̄dictis C. J. occasionem
 rit a die dat script p̄dicta p̄ ipm
 J. hic in Cur' plac' usq; vicesimū no-
 diem tunc instantis Junii inclusive
 pacifice & quiete sine aliquibus im-
 memento negatione restricōne vel mo-
 atione p̄dicta Thome (modo quer) Ada-
 m̄ Nichū Edm̄ Willi & Ric̄i vel eorum
 m̄us vel aliquaꝝ aliaꝝ persone sive
 sonaꝝ clamantium aut clamaturaꝝ
 vel subter p̄dicta Thomam (modo
 Adamū Nichū Edm̄ Willm̄ &
 vel eorū aliquem quibuscunq; me-
 vel modo, Et p̄dicta Thomas (modo
 unacum p̄dictis Adamo Nicho Edm̄
 llo & Ric̄o p̄ scriptū p̄dictū p̄dicta
 J. hic in Cur' ut p̄fertur plac') & p̄
 libet eorū sepatim & p̄ seperatis & re-
 tribus Executoꝝibus & Administrato-
 us eorū & non unū eorū p̄ altero eorum
 und eorū p̄ executoꝝibus vel Admi-
 alterius eorū convenerunt p̄mise-
 & concesser' ad & cum p̄fac C. J.
 cutozibus & Administratoꝝibus suis
 infra p̄dicta tempus limitat' per scrip-
 p̄dicta (per p̄dicta C. J. in Cur' hic
 concess' p̄dicta C. J. Executoꝝes
 ministratoꝝes vel bona ejus non ar-
 rentur attachiarentur imprisona-
 rentur sectarentur prosequerentur vel
 estarentur per ipsos p̄dicta Thoma
 (modo quer) Adamū Nichū Edm̄ Will-
 & Ric̄ū vel eorū aliquem ob vel
 propter

propter aliquod debitum vel aliqua
bita tunc debet aut debet fore nec pro-
ter aliquam materiam vel rem tunc
execut omisit vel rem tunc facta ex-
omisit vel promisit ante dat scripti
dia' (per p'dia' C. J. ut p'fertur hic
Cur p'olat', Et p'dia' C. J. (modo quod
Adamus Nichus Edus Willus &
chus ulterius per scripti p'd per eundem
C. J. hic in Cur p'olat') conbenerunt
quod si eorum aliquis aut Executores Ad-
ministratores vel Assigni eorum alicujus
restarent attachiarent imprisonarent
tarent prosequerentur vel molestar-
p'dia' C. J. Executores Administratores
vel bona ejus arrestari attachiari
p'isonari sectari prosequi vel mole-
causarent per aliquam personam vel
sonas pro vel ex alicujus ipsorum
Thome (modo quer) Adami Nichi &
Willi & Nichi ante expirationem p-
dierum licencie per scripti p'dia' C.
p'dia' C. J. in Cur hic p'olat') com-
pro aliquo debito aut alia re ut p'fer-
tunc talis ipsorum p'd C. (modo quer) Ad-
Nichi Edus Willi & Nichi per quem
cujus parte talis violatio aut infra-
fozet de libertate & licencia per scrip-
p'dia' (per p'dia' C. J. hic ut p'fer-
in Cur p'olat') concess' forisfacere
amitteret debitum vel debita ipsi
ipsis tunc debet per p'fat C. J. &
scripti p'dia' per p'dia' C. J. hic in
p'olat' estimaretur & adjudicaretur
ciens relaxatio & exonerao p'fat C.
pro talibus debito vel debitis que

fieri iporum pdia' C. (modo quer)
 dami Richi Edm Willi & Richi per
 C. J. debet forent & insoluit pro
 per scriptum pdia' (per pdia' C. J.
 in Cur pzolet) plenius liquet & ap
 ter, Et pdia' C. J. ulterius dic qd
 confessionem scripti pdia' (per pre
 C. J. hic in Cur pzolet) & ante
 vicessim nono diem Junii supe
 menconat pdia' C. R. (modo quer)
 die talis mensis) Anno regni dicti
 Regis nunc quarto supradicto exi
 infra tempus libtat & licencie supe
 concess. apud paroch (Ec.) in Com
 pdia' pdia' C. J. arrestari cau
 dit virtute cujusdam pcepti Dni Re
 e Cur dicti Dni Regis Palatii Re
 Westm pdia' emanand pro pdia' de
 trigine librarum in Parr pdia' su
 menconat Ipsumq C. J. super
 imprisonari & in pzisona p spacium
 dierum detineri causabit, Quod
 debitum pdiarum triginta li
 brarum pdia' septimo die Junii Anno
 quarto supradcto pstat C. R. per pdia'
 J. debet fuit & insoluit racone qua
 quidm pmissorum & virtute scripti
 per pdia' C. R. ut pfertur fac
 sigillat & p pdia' C. J. hic in Cur
 pzolet idem C. J. dic qd pdia' C. R.
 debitum suum pdia' forisfecit & amittit
 ipse C. J. a debito pdia' & ab om
 parcelle inde omnino relaxat & ero
 gat existit, Et hoc parat est iudicare
 de pet' iudicium si pdia' C. R. actio
 nem

Case.

nem suam p̄dict' inde vsus eum heret
manutenere debeat, &c.

Vide Hansf. 62. Vide Tho. 169. Bro. Met.

*Def. p̄litat' qd'
le Testator com-
putavit secum
in vita sua &
Def. super illo
invenit' existen'
in 12 l. ipse
postea solvit
10 l. & l' auter
40 s. obtulit
solvere Execu-
trici.*

Et p̄dict' R. p. A. B. Attor' su-
venit & defendit vim & injur' qua-
do, Et idem Def. dicit qd' Quer' (A-
non) quia dicit quod post tempus leg-
lium p̄missionis & assumptio p̄ eundem
Def. p̄fat' testatori in vita sua in Pa-
racōne p̄dicta' superius fieri supposit' (scilicet
tali die anno & loco) p̄fat' testator in
ta sua & idem Def. insimul compu-
bant de omnibus denariis sum-
p̄ eundem Def. p̄fat' testatori tam p̄
dictis quatuor vaccis in Narracōne
mencōnat qm̄ p̄ omnibus aliis adven-
p̄ p̄fat' testat' eidem R. ante tempus illud
vendit & delibet & tunc debet & info-
Et super Compō illo idem Def. in-
fuisse in arreragiis erga p̄fat' testa-
rem in vita sua in duodecim lib-
legis monete Anglie qd' idem Def.
scit (tali die anno & loco) solvit
testatori in vita sua decem lib- de p̄
12 l. sic super Compō illo p̄fat' testa-
in vita sua debet Et idem Def. ulter-
die qd' ipse idem Def. post mortem
testatoris & ante diem impetrato-
hys Originalis ipsorum quer' scit (tali
anno & loco) obtulit ad solvendū p̄
Executrici dum ipsa sola fuit qua-
ginta solidos de p̄dicta' 12 l. restis q-
quidam 40 s. p̄dicta Executrix de e-
Def. recipere penitus recusabat qu-

iste idem Def. semper post p̄dēd (tlem
nem) hucusq; parat fuit & adhuc parat
erit ad solvend p̄dia' Executrici dum
la sola fuit ac p̄fat quer post dis-
salia inter eos celebrat eosdem 40 s.
quadraginta solidi ille idem Def. pa-
r ad solvend p̄dia' quer hic in Cur
Et hoc parat est verificare Unde
erit iudicium si p̄dia' quer actionem
am p̄deam inde versus eum here de-
ant, &c. Cum hoc quod idem Def. ve-
icare vult quod p̄fat testator in vita
a post p̄dēd Computū int p̄fat testato-
m & eundem Def. sic ut p̄fertur hic non
debat neq; delibabat eidem Def. ali-
am vaccam vel alia averia quocunq;

*Averment quod
Testator null'
al' averia ei-
dem Def. post
Computum
vendebat.*

Repl.

*Quod Def. non
solvit neque
obtulit ut su-
pra placitando
allegavit.*

*Pro placito
assumpsit.*

*Traverse.
Del Account.*

Et p̄dia' quer dicunt quod ip̄d p ali-
a pallegat ab accōne sua p̄dca hēd
ndi non debent quia p̄testando quod
ia' def. non solvit p̄fat testatori p̄d'
em libras in placito p̄dia' def. supe-
s specificat p̄testando etiam qd p̄dia'
post mortem p̄dia' testatoris non ob-
it ad solvend p̄dia' Exec dum ip̄a so-
luit p̄dia' 40 s. put p̄dia' defend supe-
s p̄fitando allegavit p̄ p̄lito idem
ut prius dicunt quod p̄dia' def. as-
p̄it sup se modo & forma put p̄dia'
superius versus eum queruntur
hoc quod p̄dia' Testator in vita
& p̄dia' def. insimul computabant
do & forma put p̄dia' def. superius al-
abit Et hoc parat sunt verificare un-
petunt iudiciū & dampna sua occōne
miss. ubi adjudicari, &c.

Z

Et

Case.

Rejoinder.
*Quod Testator
 cum illo com-
 putabat. Et
 exit' sur ces.*

Et p̄dict' def. ut prius die q̄d p̄dict' Testator in vita sua & p̄dict' def. infirm' computabant modo & forma put idem def. supius allegavit videlicet apud p̄dict' Et de hoc pon' se super priam p̄dict' quer' alie Nō preceptū est Die Venire fac' hic, (Ec.)

Defendant pleads, That the Testator gave him Orders to sell the Cloth, which he did accordingly, and paid the Money to the Testator. *Bro. Vad. 88.*

That Defendant and Intestate did account and thereupon it appear'd he did not owe a Penny to the Intestate, *Repl' non computabit & Issue. Id. 102.*

Def. p̄testando non assumpsit p̄ p̄dict' That he paid 10*l.* 9*s.* to the Intestate in Life-time in full Satisfaction. *Repl' non solvit & Issue. Id. 116.*

That he accounted with the Executor of his Husband, and paid him 40*s.* the Arrearages. *Repl' p̄testando non computabit & p̄dict' non solvit. Idem 100.*

Al' Narr.
*Quod Def. in
 consf. sursum
 reddidit termini
 Shope quer' in
 Shopa sua.*

Bar.
*Qd Def. obtulit
 imponere quer'
 in Shopa sua
 qd' recusavit.*

¶ **A** Cō non, Quia die q̄d idem ad p̄dictum festū Natalis in Narratōne p̄dict' specificat videlicet die (& anno) apud h. p̄dict' paratus & obtulit p̄dict' D. ad imponendū p̄dict' in quietam & pacificam possessionem Shope in h. p̄dict' quam idem A forma p̄dict' in Narratōne p̄dict' allegavit fuit & occupavit ac q̄d p̄dict' D. h. & occupasse potuisset eandem Shopam & durante p̄dict' Termio quinq; annis post p̄dictum festū Natalis Dni

sequen abloꝝ aliqua disturbacone
uarunꝝ sedm pmissionem & assumptioem
pñus N. pñia' Et ulterius idem N.
qđ eisdem (tñbus die & anno) apud
pñcam pñia' D. recusavit imponi in
quietam & pacificam possessionem Shope
ñius p eundem N. Et hoc parat est ve-
ficare Unde petit iudicium si pñia' D.
ñionem suam pñcam inde verlus cum
ere seu manutenere debeat, &c.

*Some Cases and Notes as to Special Pleadings
on Assumpsits.*

IN Consideration of forbearing a Suit upon
a Trespass, the Defendant promised Re-
compence the 1st of May; and that after he
requested him, and the Defendant refused.
the Defendant pleads the Statute of *Limita-*
tion; but the Narr' adjudged good, and that
there was no Cause of Action till the Request
made of the Recompence. 1 Cro. 99.

Recompence
and Request.

Deceit upon a Promise to deliver 400
Hundred of Wax for Moneys paid, &c. and

Deceit and
Accord.

he delivered only 300 Pounds, and 73
Hundred of bad Wax, warranting it to be
good, &c. The Defendant pleads an Accord
made after for 20 Pounds of Wax, as well for
Insufficiency, as for the Residue, and that
Plaintiff accepted it. Upon Demurrer
Bar was held good, and that a Concord
secured is a good Plea in all Actions, where
nothing but Damages are to be recovered:
that Arbitrement is a good Plea before
it is executed; for Debt will lie upon Arbi-
ment. Dyer 75. Andrew's Case. Vide 355.

Case.
Deceit.

An Action was brought in Nature of a Deceit, for that the Defendant had sold to the Plaintiff certain Sheep, and had warranted them to be sound, when indeed they were rotten. The Defendant pleads, they were sound at the Time of the Sale; *Et de hoc (¶c.) Absq̃ hoc*, That they were rotten. The Plaintiff demurs, and adjudged for him because the Defendant had taken Traverse of the Cause of Action, and an Issue cannot be taken upon Two Affirmatives. *Noy's Rep. 1 Yelv. 114. Redhead and Harper. Vide postea.*

Traverse.

Quiet Enjoyment.

Parr upon Promise, That the Plaintiff should quietly enjoy Lands, and to save him harmless, &c. and shews he was ousted, and a Judgment against him in Ejectment. The Defendant pleads the Statute of Limitations. Held that the Action well lies, if Execution was not taken out, and that damages should be entire, tho' the Breach was but in Part. *1 Cro. 254, 255. Peck and another.*

Defendant discharged of Promise.

In an Action upon Promise, to go for a Voyage. The Defendant pleaded, That before any Breach the Plaintiff such a Day was in such a Place, *Exonerabit eum* of the Promise. The Plaintiff demurs, and adjudged this was a good Discharge without shewing how. *1 Cro. 279. Langden and Stokes.*

Upon Promise to deliver a Greyhound.

Upon a Promise to deliver the Plaintiff a Greyhound, which the Defendant had sold. The Defendant demurred, pretending it was *feræ naturæ*, and that the Plaintiff had no property in it, and that a Mastiff, a Hound (which comprehends a Greyhound), a Spaniel and a Tumbrel, are Dogs valuable, who

Dogs of Value.

Man may have Property, and about which
 Actions are given; and that there needs no
 Averment that the Dog was tame, for that it
 shall be intended. 1 Cro. 125, 126. Owen's
 Rep. 93. Ireland and Higgins.

In Consideration the Plaintiff promised to
 deliver up the Defendant his Bill for a Debt,
 the Defendant promised to find Sureties to
 be bound for it, and that he produced Two
 Sureties of no Value. Defendant pleads the
 Plaintiff had not delivered him the said Bill.
 Plaintiff demurs, and adjudged for the Plain-
 tiff; for a Promise against a Promise is a suf-
 ficient Ground of an Action, and he need
 not shew that he had done it, and the find-
 ing of bad Sureties is the same as if he had
 found none. 1 Cro. 543. Grower and Capper.

Upon Pro-
 mise to find
 Sureties.

Upon a Promise to pay *quantum valeret*,
 for Necessaries for a Suit of Cloaths, &c. De-
 fendant pleads Nonage at the Time, Absor-
 ption, &c. Plaintiff demurs, and Judgment for
 him; and that it must be shewn on the In-
 fant's Part, that the Apparel was such as was
 necessary for him. Bendl. 185. Delaval
 and Cleere.

Upon quan-
tum valeret
 for Necessa-
 ries.

Upon an Indebitat Assumpsit for ma-
 king Apparel. Defendant pleads, That he
 became bound in a Bond of 60 l. in Satis-
 faction, and that the Plaintiff accepted it.
 Rep'l non accepit. Defendant demurs, for
 that the Plaintiff had tendred an Issue upon
 the Non-acceptance of the Bond, whereas it
 should have been, that the Defendant Non
 recevit tentus. But 'twas answer'd, That
 Non accepit was sufficient, and that tho' the
 replication be not good, yet the Plea is all

That he gave
 60 l Bond in
 Satisfaction.

Case.

naught, and therefore no Judgment can be for the Defendant. *Stile's Rep.* 309. *Kymble* and *Barnfield*.

That the Plaintiff gave Day, and arrested the Defendant before.

An Executor, in Consideration that the Plaintiff would give him Day till *Michaelmas* for the Payment of the Testator's Debt assumed to pay it Plaintiff shews *in facto* he gave a Day till *Michaelmas*. The Defendant pleads, That after the Promise and before *Michaelmas*, the Plaintiff arrested him for the same Debt. The Plaintiff demurs: *Garrard* said, if he did not receive Money before *Michaelmas*, the Consideration is performed *Fenner*, To what Purpose then was Day Payment given? *Popham*, He did not promise to forbear to sue him, and the Payment is forborn if the Money be not receiv'd. *Late Rep.* 151. *Thornton* versus *Kemp*.

Defendant pleads, he had acknowledged the Statute for the Money.

That the Defendant 19 *Maii* 29, &c. promised upon Forbearance of a Debt to pay Defendant pleads, That he was indebted 29 *Maii* 29. and afterwards acknowledged Statute for the same Debt upon which the Plaintiff had levied the Money; *Abbot* held that he was indebted *antea vel post vel aliquo modo*. The Court held, the Cause of the Action is the Assumption, and where the Consideration is not traversable; always the Ground of the Action is traversable, and *Assumpsit* is the Ground, and not the Debt. *Judic pro Quer.* *Leon.* 252, 253. *Smith* and *Hitchcock*.

Defendant pleads a Release from Husband of a Promise to Wife, to pay her Money after his Death.

Belcher and his Wife against *Hudson*, for Promise to the Wife in her Widowhood, That if she married *Thomas Mason*, the Defendant would pay her 40 s. per Annum during

after *Mason's* Death; avers she married *Mason*, and after his Death married the Plaintiff, &c. The Defendant pleads a Release from *Mason*, of all Actions and Demands which he had, &c. The Plaintiff's demur, and admitted no Plea; for the Money was not in Demand during *Mason's* Life, nor could ever be demanded by him. 2 Cro. 222.

Upon an *Indebitatus assumpsit* for 5 l. The Defendant pleads, That he being indebted 5 l. to *W. S.* in another 5 l. they gave the Plaintiff Bond of 20 l. for Payment in Satisfaction; that the Bond was sealed before *Assumpsit* supposed and made for the said Debt. The Court held, this was no good Plea. *Leon. 154. Jennings and Winch.*

That he and a Stranger join'd their Debts, and gave Bond.

Against a Carrier, upon his Promise to carry Goods safe, and suffer'd them to be spoil'd: The Defendant pleads, Not guilty.

Carrier pleads *Non Culp.*

Judicium pro Quer. Issue was held erroneous; for it ought to have been *Non assumpsit*, for the Plaintiff relied upon that chiefly. *Noy 114. Bradly versus Benny.*

Vide postea.

The Consideration was, (the Plaintiffs having a Grant from the Defendant to cut down 1000 Trees in a Wood, and had cut some of them) That if the Plaintiffs would forbear, he would after Three Years have Licence to cut and make up the 1000. Plaintiffs aver, That at that Time they had cut but 800 & non amplius; and that after Three Years the Defendant hindred them to cut the Residue. Defendant pleads, That before the Promise made,

Upon Promise to cut down 1000 Trees.

Averment.

Case.

Traverse upon
Averment.Infant pro-
mises to pay
for Cure.Def. pleads
his Wife was
dead before
his Promise
made.

made, the Plaintiffs had cut 1000 Trees
abſoꝛ hoc, That at that Time they had
but 800 only. Plaintiffs demur, Judice
Defendant, for every Matter in Deed alle-
ged by the Plaintiffs may be traversed by the
Defendant. And the Defendant may by Way
of Traverse answer the Matter alledged in the
same Words as the Plaintiffs have alledged
them; and therefore the Plaintiffs by the
Demurrer upon the Bar have confessed the
Cutting of 1000 Trees, which was their first
Bargain at first, and by Consequence there
no Consideration whereon to ground their Pro-
mise. *Yelv. 195. Tatem & Poulter.*

Upon a Promise to pay for a Cure, the
Defendant pleads Nonage, & per Judice
accord. It was held the Action will lie, for
this Thing is as necessary for him as Meat
Drink and Apparel, therefore his Promise
as binding for this as the other, tho' under
Age. The Court left the Plaintiff to demur
to the Plea, and then 'twas agreed by the Par-
ties. 1 *Bulst. 39. Dale & Copping.*

A. the Widow and Executrix of B. married
C. and dies, the Goods come to C.'s Hands
who promises to D. Son and Legatee of A.
That if he would forbear a certain Time, he
would pay D. the 7*l.* That the Plaintiff did
forbear, and C. did not pay, &c. C. pleads his
Wife was dead before he made this Promise
and therefore he ought not to be charged. The
Plaintiff demurs; the Chief Justice said, That
next of Kin to the Wife may have Letters of
Administration, and so take the Goods out of
the Husband's Hands; and this Promise being
after Death, not good. If the Husband be sue-

these Goods in the Ecclesiastical Court, he
with a good Plea in Bar, that he is ready to
deliver them unto the Administrator. The
whole Court agreed against the Plaintiff, Judg-
ment *Quod quer nil capiat per Willam.*
133. 1 *Bulst.* 44. 2 *Cro.* 257. *Smith ver-*
Jones.

The Plaintiff declares, That he and the
Defendant accounted, and that thereupon the
Defendant was in arrear to him 6 *l.* which he
promised to pay at a Day then past. The De-
fendant confesseth the Account, and Arrear
6 *l.* and for the Payment of which he en-
tered into Bond to the Plaintiff, *absque hoc,*
that there was any other Account between
them since that Time. Plaintiff demurs, for
that the Account is not traversable, but the
Assumpsit in this Case. *Yelv.* Justice said, the
Defendant doth not traverse the Consideration,
but by his Plea he confesseth the Action with
full Satisfaction made of the same demanded;
and that he could not have taken a better Tra-
averse; the Court agreed in Judgment, *Quod*
quer nil capiat per hęve. 1 *Bul.* 16. *Tol-*
versus Cooke.

The Defendant in Consideration the Plain-
tiff would pay him 100 *l.* promised to enfeoff
him of certain Lands upon Request. That he
did and requested, and Defendant refused.
Defendant pleads, That before the Action
brought, he did enfeoff the Plaintiff, who ac-
cepted thereof in Satisfaction and Discharge
of all. The Court agreed, That the Accep-
tance went in Discharge of all. And Judg-
ment *Quod quer nil capiat per Willam.*
1 *Bul.* 38 *Wolverton versus Davis.*

Account and
in Arrear.

Def. says, he
gave Bond for
the Payment.

That he had
enfeoffed, and
Plaintiff had
accepted be-
fore the Acti-
on brought.

Case.

Def. pleads,
Plaintiff a-
greed to dis-
charge him
for a lesser
Sum, & *sem-
per paratus.*

Dorothy Richards, Executrix of *A.* her H
band, declares, That *B.* in Consideration
two Weighs of Corn delivered to him by
Testator, promised to pay the Plaintiff
Defendant pleads, That after the *Assumpsit*,
Plaintiff in Consideration that the said *T*
Weighs were drowned by Tempest, and
Consideration that the Defendant would
the Plaintiff for every 20 s. of the said
3 s. 4 d. scit in tot 33 s. 4 d. did discha
the Defendant of the Promise; and ave
further, that he had been always ready to
the said Sum newly agreed; Plaintiff dem
& *Judic pro Quer. Leon. 19.*

Upon Daugh-
ter's Promise
to pay her Fa-
ther back 20l.
of her Marri-
age Portion.

Collins versus Willis, The Father make
Promise to *Willis*, That if he would marry
Daughter, to pay him 80 l. for her Porti
but *Willis* demanded 100 l. or else did re
to marry her. Whereupon the Daugh
prayed her Father to pay the 100 l. and
Consideration thereof she did assure him
pay him 20 l. back again. The 100 l.
paid, and the Marriage took effect, and
Father brought his Action upon the C
against the Husband and the Wife for
20 l. *Gawdy* and *Fenner* said the Action wo
lie, but *Popham* held the Consideration v
Owen 63.

Plaintiff,
Horse lent out
by Hostler.

The Plaintiff shews that he left his H
with the Defendant, being an Inn-keeper,
be safely kept at such a Rate, and the De
dant lent him out to hire to divers Perso
whereby he was made lame, and the Plai
lost his Business, and was damnified, &c. U
on Not guilty, Verdict was found for
Plaintiff; and it was moved, That since

found 20 Marks Damages, that the Defendant might detain the Horse. The Court in this Case, the Damages are not given for the Horse, but for the Misuse and Loss of the Horse. But in Trover it is in Recompence of the Horse, and the Plaintiff had Judgment. 171.

Case.

20 Marks Damage.

Moved to detain the Horse.

Deceit.

As to Deceits arising by Contracts, Bargains and Sales.

It is to be observed, That if one sell me Cattle or Goods that are none of his own, and they be taken from me, or I am molested by the right Owner, I may have an Action on the Case against the Seller, especially if he give Warranty, or knew them to be another man's.

So if one sells me a Horse, and warrant him sound Wind and Limb, and he have a secret Disease, but not if the Disease or Fault be apparent; or the Warranty made after the Contract or Thing sold, or extends to a Thing to come, unless it be by Deed or Covenant.

Yet it will lie where one sells me corrupt Animals. See *Finch* 188. 5 H. 7. 41. F. N. B.

13 H. 4. 2. 7 H. 4. 14. 20 H. 6. 37, &c.

Sale of deceitful Things, F. N. B. 98.

H. 6. 34. 2 H. 7. 12.

For selling that which is none of his own,

Cro. 44. 2 Cro. 1, 4, 193, 196, 197, 474.

pl. 8. 5 H. 7. 41. 4 Co. 18. 8 Co. 42.

For

Case.

For warranting a Horse sound, *Noy's* 124. *Relv.* 114. *Sed vide Stiles* 310. 2 *Cro.* 3 *Bul.* 94.

Sale of deceitful Wares, or by deceitful Measures, *Dyer* 75. 2 *Cro.* 196. 19 *H. 6.* 20 *H. 6.* 34. 11 *Ed.* 4. 6. 42 *Aff. pl.* 8, &

Sale of corrupt Victuals, *Kelw.* 91. 11 *Ed.* 4. 6. *Sed vide Dyer* 75, 76.

By a Tradesman in his Trade, 2 *Cro.* 469, 471. *Bridgman* 126, 127.

Bar in Trover.

Per Custome de London' a emer & vender biens inter ortum & occasum solis in le Shop de Chef. cum Freeman, Et que un W. B. esteant possesse del biens in le Count, tiel jour vend eux a luy esteant un Freeman de London' in Son Shop la.

ET pdict' T. p. J. S. Attoꝝd su vend & Defend vim & injur qu do, &c. Et dic qd pdict' Robtus acior suam pdictam versus eum here non bet quia dicit qd Civitas Londond antiqua Civitas infra quam quid Civitat' hetur & a tempore cujus contrarii memoria hominum non crehebatur eoe Mercatum tam p Civit' ejusdem Civitatis qm p omnibus a psonis quibuscunq ad emend & vend ones & singulas res & merchandizas omnibus locis publicis & apertis in eandem Civitatem Suburbia & Villat' ejusdem quost die in Septim (die Dñico & diebus Festivalibus cat' (Holy-Days) tantummodo excep' ortu solis usq ad occasum solis dum do una pars contrahenciū sit liber mo vel liba mulier ejusdem Civit' Et idem Thom' ultius die qd ante p tempus quo supponitur Bona & Cella pdicta ad manus & possessione ip

Thom debuisse scilicet primo die Sep-
 tembris Anno Regni Dñi Regis nunc
 septimo apud London̄ pdictam videlicet
 paroch̄ Sc̄i Sepulchri in Warda de
 Warrindon extra quidam W. B. fuit
 possessionat de Bonis & Catallis pdictis
 Et sic inde possessionat existens idem W.
 idem primo die Septembris Anno Sep-
 tembris supradicto post ortum solis & ante
 occasum ejusdem diei apud London̄ vi-
 dit in quadam thopa ipsius Thom̄ sci-
 entat in Paroch̄ & Warda pdicta (existen-
 tes publico & aperto) Bona & Catalla
 pdicta eidem Thom̄ adtunc libo homine
 habitat pdicta existen- pro certa pecunie
 summa inter eos concordat publice &
 aperte vendidit & deliberavit p quod
 idem Thom̄ fuit de eisdem Bonis &
 Catallis possessionat Et sic inde posses-
 sionat existen- pdicta tempore quo, &c.
 Bona & Catalla pdicta ad usum & profi-
 tum suum proprium adtunc & ibi cepit dis-
 soluit & convertit put ei bene licuit Que-
 rationem capto ratione vendicionis pdicta
 Conversio & Dispositio Bonorum &
 Catallorum pdictorum sunt eodem in-
 tentio & conversio unde predictus Rob-
 ertus superius se modo queritur Cum hoc
 idem Thom̄ verificare vult qd pre-
 dictus primus dies Septembris Anno
 Regni dicti Dñi Regis nunc Septimo
 non fuit dies Dñicus nec dies festiva-
 lis ac qd idem Thom̄ tempore barg-
 amentacionis & vendicionis pdictarum in
 prima pdicta factarum fuit & adhuc est
 liber homo pdicta Civitat London̄ Et
 hoc

Averment.

Case.

hoc idem Thom^o parat est verificare
de petit iudiciu^m si p^odia^r Robtus ag
nem suam p^oditam versus eum here
beat, &c.

Repl.

*Que def. trouve
les biens come
en le Count, &
puis delivrer
eux al dit.*

*W. B. qui per
covin & fraud
perenter luy &
def. (al intent
a defrauder le
p^or) vend^t eux
al defendant.*

Et p^odius Robtus die q^u ipse p
qua pallegat ab acc^one sua p^odia^r h
p^ocludi non debet quia die q^u ipse f
possessionat^r de Bonis & Catallis p
dictis ut de Bonis & Catallis suis p
p^oriis & sic inde possessionat^r existend
dem Bona & Catalla extra manus
possession^{is} suas casualit^r amisit q^u quid
Bona & Catalla postea scilicet p^o
decimo die Septemb^{ris} anno septi
suprad^o apud London^{em} in Paroch^{ia}
Warda p^odis ad manus & possess^o
ipsius Thome p^o inven^oonem devenet
quod idem Thomas fuit de bonis &
tallis illis possessionat^r ipso^r Thoma
inde possessionat^r existend & sciens bona
catalla p^odia^r fore bona & catalla ipse
Roberti pp^o ac intendens ad defra
dand^u ipm^o Robtum de bonis & catall
p^odis bona & catalla illa delibavit p^o
W. B. p^o quod idem W. fuit de bon
& catallis p^odia^r possessionat^r Ipso^r &
sic inde possessionat^r existend & p^odia^r &
sciens bona & catalla p^odia^r fore bo
& catalla ipsius Robti pp^o p^odia^r decim
die Septemb^{ris} anno septimo suprad^o
apud London^{em} in Parochia & Ward
p^odia^r vendidit p^odia^r bona & catalla p^o
Thome p^o covinam & fraudem adtunc
ibm^o fit inter p^odia^r W. & Thomam
intenc^one ad defraudand^u ipm^o Robtu
de bonis & catallis p^odis que quidam

indico bonorū & catallorū pdict' est ea-
dem venditio in barra pdict' supius spe-
ciat Et hoc parat est verificare unde
quo pdict' Thomas conversionem bo-
nū & catallorū predictōrū superius cogn-
itū Robertus petit iudiciū & dampna
occōne premis sibi adjudicari, &c.

Et pdict' Thomas ut prius die quod
pdict' W. B. fuit possessionat de bonis &
catallis pdict' Et sic inde possessionat
idem W. B. eodē primo die
septembris anno septimo supradictō post
medium solis & ante occasum solis ejus-
dem diei apud London p̄dicandū videt in
pdict' Shopa ipsius Thome situat in
paroch & Warda p̄dictis (existenti loco
publico & apto) bona & catalla pdict'
Thome ad tunc libo hominū Civitatis
pdict' existentē p̄ certa pecunie summa
inter eos concordat publice & apte ven-
dit & delibavit p̄ qd idem Thomas
pdict' tempore quo, &c. bona & catalla
pdict' ad usum suū p̄p̄riū disposuit &
invertit Absq; hoc qd pdict' W. B.
vendidit eadem bona & catalla eidem
Thome p̄ cobinam & fraudem inter pd'
& Thomam ea intentione ad defrau-
dandū ipm Robertum de bonis & catallis
dictis put pdict' Robertus supius allega-
vit Et hoc parat est verificare unde pe-
t iudiciū & qd pdict' Robertus ab ac-
tione sua pdict' versus eum hend p̄cluda-
vit, &c.

Et pdict' Robertus ut prius die qd pre-
dict' W. B. vendidit pdict' bona & ca-
talla pdict' Thome per cobinam & frau-
dem

Rejoinder.
Per mainte-
nance del' bar
& traverse del'
Covin, &c.

Le Travers.

Surrejoinder
Et Issue sur le
Covin.

Case.

dem inē pdia' III. & Thomam ea int
cōne ad defraudandū ipm Robtum de
nis & catallis pdcis put ipse superi
allegabit Et hoc petit qđ inquiratur
Patriam Et pdia' Thomas fide
pcept est Dic qđ Venire fac hic,
Vide Winch. Ent. 109. Defendant justifies
king the Cattle as forfeited to the Mayor,
of London, as being sold in *Smithfield* before
Nine a Clock. *Tho. 380.*

Placitum al'
Trover quod
def. emisset bo-
na in aperto
mercato in
Westm.

Et pdia' C. p — Attorū suū vend
defend vim & injur quando, &c.
dicit qđ pdia' C. accōnem suam pd
inde versus eum hēre seu manutene
non debet Quia dic qđ infra Paroch
am Sēd Margarete Westm in pd
Com Midō est & a tempore cujus co
trarii memoria hominū non existit tē
quoddam Mercatum tene sup quemlibet
diem Sabti septimanatim & singlis se
timanis a toto tempore supradcō p em
cōn & vendicōn omniū & omnimod
noꝝ & catalloꝝ mercimon & mercha
dizā qđq diu ante pdia' tempus q
supponitur convencōn bonozum & cat
loꝝ pdice fieri quidam J. H. posses
nat fuisset de bonis & catallis pdia'
narracōne ipsius C. supius mencōn
qđq pdia' J. H. postea & ante pd
tempus quo, &c. scit sup diem Sa
decimo sexto die Junii Anno Regni d
Und Regis nunc, (&c.) supradcō ap
mercatum pd infra Paroch Sēd Ma
garete Westm in Com Midō in ape
mercato videt inter hoꝝam decima

ante meridiem & horam secundam post
meridiem ejusdem diei vendidit pdia'
bona & catalla pdia' C. per qd idem C.
postea scit pdco tempore quo, &c. pdia'
bona & catalla ad usum ipsius C. ppd
convertit & disposuit put ei bene licuit
et hoc parat est verificare Unde petit
judiciu si pdia' C. accõnem suam pdia'
inde versus cum here seu manutenere
debeat.

Responso qd non vendidit modo & for-
na, &c. Vide Rob. Ent. 24, 449, 450. Sile
London. Thomp. 62. 1 Bro. 158, 357. in
pro Mercato. 2 Mo. Intr. 151.

Quando, &c. Accõ non Quia ptestan-
do qd pdia' annulus non fuit tanti
valoris put pdia' S. p Breve & Parr
na pdia' superius suppon ptestando
iam qd annulus pdictus non devenit
ad manus & possessionem ipsius R. p in-
tencionem put pdia' S. p Breve & Parr
na pdia' superius suppon p pfito dicit qd
undam C. P. fuit possessionat de annu-
lo pdco ut de annulo suo ppd Et sic in-
tencionat existend idem C. P. postea
ult die & anno, (&c.) apud London in
Paroch Bre Marie de Arcubus in
Warda de Cheape pdia' p certa pecunie
suma vendidit annulu pdictum eidem
virtute cujus vendicõnis idem R.
intencionat de annulo pdco ut de
annulo suo proprio Et sic inde possessio-
nat existend idem R. postea scit die &
anno supradcis apud L. pdia' in Paro-
chia & Warda pdia' pro certa pecunie

Justification
in Trover, de
annulo per loyal
emption de sco,
& overtment
vendition de
ceo arreare. Et
traverse sa sci-
ence del' pro-
perty destr en
le Plaintiff.

Case.

suūa vendidit annulū pdictum cuidam
C. f. Civi & Murisab? London in ap-
mercato ibm virtute cuius vendicem
idem C. f. fuit possessionat de annu-
pdcō ut de annulo suo proprio Absq; h
qd idem A. ante pdict' tempus vendic-
nis annuli pdcī pstat C. f. fac' scrib
annulum ille fore annulum p̄s S. pro
idem S. p Bz & Mare sua p̄ca sup-
rius suppon Et hoc, (Ec.) Unde, (Ec.)
Vide Rob. Ent. 30.

*Pro Equo. Bar
quod def. cepit
Equam ut ex-
trahur' & fecit
proclam' inde
& posuit eam
ad depastu-
rand' & quia
quer' noluit fo-
vere def. propa-
stura desinebat
Equam quousq;
evasit.*

A Econon non, Ec. Quia die qd bene-
verum est qd pdict' C. fuit poss-
sionat de Equa pdict' ut de Equa
prop? sed idem def. ulterius die qd i-
idem def. ante pdict' tempus quo sup-
nitur Equam p̄cam ad manus & p-
sessionem ipsius def. devenisse Ac eod-
tempore quo, Ec. fuit & adhuc cri-
scit de & in Manerio de D. cum ptin-
H. pdict' in Dñico suo ut de feodo C.
idem def. & omnes ille quozd statū id-
def. modo het in Manerio pdcō cum p-
rind a tempore cuius contrat memo-
hominū non existit huc & here con-
ber omiōd extrahuras venicē infra
nerium pdict' Et easdem extrahur
tot tempus pdict' seisber & seisre
sueber Et idem def. ulterius die qd
Equa pdict' ante pdict' tempus quo
ponitur Equam ille ad manus & po-
sio? ipsius def. per invencon debet
scit die, (Ec.) fuit extrahur venicē
fra Manerium pdict' p qd idem def.
dem die Equam pdict' apud D. p̄

infra p̄cinctū Manerii p̄dicti inveniē ut
extrahuram seiscivit & eam adhuc & ibi
imp̄cavit in quodam cōi & apto Parco
infra Manerium p̄dictum p̄ spaciū triū
dierū Et postea scit (tal die, &c.) E-
quā p̄dictā extra Parcū p̄dictā cepit &
eam posuit ad pasturandū infra p̄cinctū
Manerii p̄dicti p̄ spaciū quinq̄ dierum
tunc p̄ sequendū Et idem def. ulterius
die q̄ ip̄e (tal die, &c.) scdm̄ cons̄ Reg-
ni Anglie usitat̄ unā p̄clamacōnem in-
de fecit in Villa Mercatoria de D. in
Manerio p̄r̄ adjacentē die Mercurii (qui
quidm̄ dies Mercurii est & tunc fuit
dies Mercatorius in p̄dictā Villa de D.)
Equa p̄dictā fuit extrahura & scit p̄
extrahura p̄ p̄dictā def. infra p̄cinctū Ma-
nerii de D. p̄dictā p̄dictō die, (&c.) p̄dictāq̄
Equa in forma p̄dictā scdm̄ cons̄ hactenus
in Regno Angl̄ usitat̄ sic p̄clam̄ existendū
ante aliquem al̄ diem Mercator̄ in
aliqua alia Villa p̄r̄ adjacentē Manerio
dictā tenē scit die, (&c.) apud D. p̄dictā
dictus C. ven̄ ad ipsū Def. p̄p̄rieta-
tē Equē ill̄ petendo & calumpniando
idem def. eodm̄ die, (&c.) apud D.
dictā parat̄ fuit ad deliberandū p̄fat̄ C.
Equā p̄dictā si idem C. solveret & red-
deret eidm̄ def. rōnabil̄ onera p̄ seiscura
p̄p̄riacōne & p̄clamacōne Equē ill̄ & p̄
fuit ill̄ p̄ tempore quo eadem Equa in
custod̄ ipsius def. remansit quod facere
dictus C. penitus recusavit sup̄ quo idem
def. Equā p̄dictā in custodia sua de-
mit p̄dictā Equa sic in custod̄ ipsius
def. existendū Equa illa postea scit die,

Case.

(*Ec.*) extra custodi ipsius def. evasit extraherebat ad loca eidem def. inco-
nie que sunt cedem invencō & condes
Eque p̄dia' Unde, (*Ec.*) Et hoc, (*Ec.*)
Unde, (*Ec.*)

*Qd' quer' obtu-
lis solvere 13 s.
4 d. pro emen-
dis & def. re-
cusavit ill' ac-
cipere.*

Precludi non, Quia p̄testando qd'
def. non fuit scie de Manerio p̄
cū p̄tin in Dūico suo ut de scodo p̄
p̄dia' def. supius allegavit p̄testando
eciam qd' idem def. & omnes, (*Ec.*) a
to tempore p̄dco non huer nec here co-
sueber omniōs extrahere, (*Ec.*) put p̄
def. supius suppon p̄testando eciam
Equa p̄dia' non fuit extrahura veni
infra Maniū p̄dia' nec qd' p̄ def.
quam p̄dia' apud D. invenit ut extrahere
seisibit nec cant adtunc & ibm impea-
in p̄dco cod Parco in Manio p̄dia'
spaciū triū dierū nec Equam p̄dia'
fuit ad pasturand, (*Ec.*) p̄r sequend
testandoz eciam qd' p̄dia' def. scdm
Regni dec Dnd Regis Angl usitat
fecit p̄clam in Villa Mercat de D.
nec qd' p̄ dies Mercur' est nec tunc
dies Mercato in p̄ Villa de D.
Equa p̄dia' fuit extrahura & scilicet ut
trahur p̄ p̄dia' def. in Manio p̄dia'
p̄dia' def. supius allegavit pro p̄
idem C. die qd' ip̄ p̄dia' die, (*Ec.*) a
D. p̄dia' obtulit p̄lat def. tresdecim
lib & quatuor denar legis monete
in plenam satisfactionem oñis & sei-
impeaçonis & p̄clam Eque p̄dia'
tempore quo eadem Equa in custodi
suis def. remansit qui quidem 13 s.

oblat fuer sufficien emende pro oñe & curia impeacon proclan & pastur & que ille pro tempore quo equa pdia in custodi ipsius def. remansit quos pdia de eodm C. acceptare adtunc & ibm nio recusabit, Et adhuc, (Ec.) Unde,

Et pdia def. quoad pdia plitum ps quoad oblaconem pced def. pcedorum s. 4 d. in plenam satisfacton oñis & cure imparcacon & proclan eque ille pro pastur eque pdia pro tempore quo pdia in custodi ipsius def. remansit protestando qd pdia 13 s. 4 d. non fuer sufficien emend pro oñe ipsius def. pro cura, Ec. (ut supra usq remansit) pro idem def. dic qd pdia C. non oblit eidm def. 13 s. 4 d. in plenam satisfacton oneris, (Ec.) remansit prout ps superius allegavit Et de hoc pon se per priam & pdia C. silit, Ec.

Vide Bro. Red. 94. Title for a Wife. Vide Bro. Ent.

Rejoind.

Protestando qd predict 13 s. 4 d non fuer sufficien emend pro plito qd quer non obtulit, Ec.

Waife

Ad acc'onem pro spadone.

Bar.

Qd quer delibetavit spadonem cuidam

C. D. ad vendend pro illo.

Et C vendidit spadonem Def.

precio (si placeret Def.) &

dedit licen Def. ad pro-

band ill p & equitacon 5

mille passuum &c.

Ando, (Ec.) Et dicit qd ps H. Acc'on (non, Ec.) Quia dic quod ante tempus quo supponitur converco spadonis pced fieri scit pdia quin die Maii Anno, (Ec.) supradco apud pdia H. de spadone pced posses. at existend eundm spadonem cuidam D. de, (Ec. gen adtunc & ibm deli- & eidem C. D. auctoritatem de ad vendend spadonem pdia ad usum possidend ipsius H. pro tali summa & tali modo prout pfae C. D. melius

visum foret ratione cuius præd C. D. de
 spadone præd' sic possessionat existend po
 stea & ante præd' tempus quo, &c. scilicet
 præd' quinto die Maii Anno, (&c.) su
 præd' apud, (&c.) præd cum præd G
 agreeabit qd præd' G. spadonem præd i
 possessionem suam caperet & rónabili
 pbarer (Anglice should try him) Et
 spado præd tempore capcionis præd no
 sanus esset (Anglice were not then found
 aut si super racónabilem probacónem
 spado ille non placeret eidem G. (An
 gllice the said G. did not like him) qd tu
 idem G. in convenienti tempore po
 racónabilem probacónem illam redel
 beraret (Anglice should send back again
 præd C. D. spadonem præd Set si præd
 super probacónem illam allocaret (An
 gllice should like) de spadone illo tunc
 G. soluet præd C. D. p spadone illo qu
 decim libras legis monete Angl cum
 de requisit esset cuius quidm agreame
 ti pretextu idem G. eodem quinto
 Maii p consensum præd C. D. spadone
 præd in possessionem suam cepit postea
 scilicet nono die ejusdem mensis Maii
 G. apud L. in Com L. præd' super
 donem præd ad proband Si idem spa
 esset sanus & ad-pte (Anglice the Likeli
 præd' G. p spacium quinqz mille pass
 rónabilie equitabit videlicet ab A. p
 usqz D. in præd Com L. idemqz G.
 iusmodi equitacóne & p alios lega
 mos modos super diligent visu (Ang
 te Marking) spadonem præd esse non
 num Ita qd idem spado eidem G. d
 plic

licuit (Anglice the said G. did dislike the Case.
 Gelding) per quod idem G. postea & Defendant
 contra convenient tempus scilicet decimo die dislike la
 eiusdem Mensis Maii Anno, (Ec.) su- Chival.
 radet apud, (Ec.) p[re]d[ic]t[um] spadonem p[re]d[ic]t[um]
 C. D. redelibabit secundum formam Re-delivery
 effectum agreementi p[re]d[ic]t[um] que quidam deins temps
 possessio spadonis p[re]d[ic]t[um] & equitatio ipsius convenient.
 super spadonem p[re]d[ic]t[um] in forma p[re]d[ic]t[um]
 et causa p[re]d[ic]t[um] est eadem conderco spa-
 nis p[re]d[ic]t[um] ad usum ipsius G. p[ro]p[ri]o
 unde p[re]d[ic]t[um] H. superius se modo queritur
 cum hoc q[uo]d p[re]d[ic]t[um] G. verificare vult q[uo]d
 p[re]d[ic]t[um] Spado post devencōnem spadonis
 ad manus p[re]d[ic]t[um] G. sup[er]aspec bene
 statat fuit (Anglice was well ordered)
 in tam bono statu (Anglice in as good Averment del
 ale and Plight) p[re]d[ic]t[um] tempore redelibacō- delivery in tam
 nis spadonis p[re]d[ic]t[um] q[uo]d Spado ille fuit bono statu.
 tempore quo p[ri]mū ad manus ipsius G.
 venit Et hoc, (Ec.) Unde & accō, (Ec.)
 p[re]cludi non, (Ec.) Quia protestando Protest' non
 cogn' aliqua, in cogn' aliqua in p[re]d[ic]t[um] p[re]lito p[re]d[ic]t[um] G. Ec. pro pla-
 pius allegat fore vera p[ro] p[re]lito die cito ut in Narr.
 ip[s]e p[re]d[ic]t[um] H. p[re]d[ic]t[um] quinto die Maii Issue sur le
 Anno, (Ec.) supradicto apud, (Ec.) p[re]d[ic]t[um] Agreement.
 p[re]d[ic]t[um] possessionat fuisse (ut in Narr usq[ue])
 ad usum suum p[ro]p[ri]um convertit &
 disposuit prout ip[s]e p[er] h[ab]et & Narr sua
 p[re]d[ic]t[um] sup[er]ius supponit Ab[se]n[se] hoc q[uo]d p[re]d[ic]t[um] Traverse.
 C. D. agreebit cum p[re]f[ac]t[um] G. modo &
 p[ro]ut p[re]d[ic]t[um] G. sup[er]ius p[re]litando al-
 agreebit Et hoc, (Ec.)

Vide i Brown's Ent. 356. Tre. Tro. 177.

Case.

*En Transgr'
sur Case sur
Trover d'un
Chival.
Df. justifie
Conversion per
le Custome
d'Angleterre,
ut communis
Hospitator.*

A Cco non) Quia dicit quod p totum
Regnum Ange modo hetur & a
tempore cujus contrarii memoria ho
minum non existit tñs hebatur consue
tudo videlt qđ si equus vel equa alicui
jus psonę sive psonarum poneretur in
aliquo Cod hospitio infra idem Regnū
ad pabulandū ac nulla psona post posicō
nem humod equi sive eque infra idem ho
spicium veniret & solvet sive alie agree
ret & componeret cum hospitatore ejus
dem hospicii pro tempore existēd p
pabulo ejusdem equi sive eque ante
quam idem pabulū p humod equam in
fra idem hospiciū depast' & consump
excederet valorem humod equi sive equi
tunc idem Hospitator ejusdem hospiti
pro tempore existēd usus fuit & a tot
tempore supradctō consuevit causari hu
mod equū sive equam ad rāzonabilem
pccium p honestas personas de vicis
suis appccari & si humod appccia
tores sup eorum appcciacōnem ejusdem
equi sive eque invenirent & declarare
pabulum humod equi sive eque in
idem hospiciū depast' & consumpē plu
valere qđ equus sive equa pced p co
sic appcciat rōnabilie valebat tunc
extunc humod hospitator p tempore ex
stēd in cujus communi hospicio equus
sive equa p'dict' ad pabulandū in formā
p'dict' possit fuisse humod equum sive
equam ad libitum suū p tempus p'dict'
vendidit seu alie in usum suū p'prium

convertit & vendere seu alie in usum
 proprium convertere consuevit p &
 erga satisfaccionem pabuli per humod
 equum sive equam infra humod hospiciu
 depast' & consumpt' Et idem R.
 dicit qd ipse pdict' tempore quo suppo-
 nitur equu pdict' in Parre pdict' supius
 perificat ad manus suas devenisse, & p
 septem annos jam p'or' elaps' & semp
 postea & adhuc est Communis hospita-
 tenens quoddam commune hospici-
 um vocat le St. George & Dragon infra
 parochiam, (Ec.) in Com' H. Quodqz
 quidam W. C. decimo die Martii An-
 no, (Ec.) apud, (Ec.) ad commune hospi-
 cium ipsius R. pdict' accessit ducen' secum
 equum pdict' in idem hospiciu quem
 eundem equum idem W. eidem R. ad-
 duxit & ibi delibavit in eodem hospicio
 pabuland' Et idem R. ulterius die
 illud equus pdict' ab eodem decimo die
 Martii Anno, (Ec.) usqz pdict' primum
 Julii Anno, (Ec.) supradicto in
 hospicio ipsius R. pdict' pabuland' re-
 mansit qdqz pabulum ipsius R. p eundem
 equu inter pdict' decimu diem Martii
 pdict' diem (Ec.)
 infra idem hospiciu depast' & consumpt'
 valebat sex libras legis monet' Ange-
 l' qd nulla persona infra tempus illud
 solvit eidem R. p pabulo pdict' nec alie
 eundem R. proinde composuit seu
 creavit p qd quidam J. H. V. M. &
 R. (Ec.) pbe & honeste plone de vicinis
 ejusdem R. & inh'ant & residen' infra pd
 parochiam de, (Ec.) ad requisiconem
 ipsius

Case.

ipius R. postea scit eodm primo di
 Julii Anno, (Ec.) apud, (Ec.) equum
 pd' racónabilie appzeiaber ad quatuor
 libras & decem solidi & non ultra Su
 quo idem R. postea scit eodm primo di
 Julii Anno, (Ec.) supradco apud, (Ec.)
 equum illum in manibus suis retinuit
 & erga satisfaccónem ipius R. & p pa
 bulo suo pdcó adtunc & ibm convertit
 disposuit put ei bene licuit Absq; ho
 qd equus pdia' devenit ad manus ipius
 R. in pdia' Com N. seu a'ibi extra p
 parochiam, (Ec.) in pdia' Com H. p
 pdia' S. supius versus cum queritur
 hoc parat est verificare Unde pcr judi
 si actó, (Ec.)

Vide Rob. Ent. 26, 27. Hern. 162.

Defendant justifies as by Distress for Rent
 Rob. Ent. 450, 451. 3 Brown. 483.

Bar al Trover.

*Al' Trover &
 Conversion del
 biens le Plain-
 tiff port vers
 un Waterman.
 Bar.*

*Que les biens
 fuer' submers.
 & perdue per
 tempestat' &
 travers le
 negligence.*

Actio non, (Ec.) Quia die qd bene
 veru est qd pdia' Quer delibab
 Cistam pdia' cum denar bonis & cata
 lis pdia' in eadm existend p'fat defend
 carianu & portand cistam pd' cum den
 bon & catale in eadm existend a kin
 ston sup Thamesin pdia' usq; ad London
 pdia' & ibm eidm Quer deliband
 pdia' Quer per narracónem suam pdi
 supius supposuit Sed idem Def. ult
 rius die qd post delibacónem ciste pdi
 cum denar bon & catale in eadem ex
 stend idem Def. cistam pdia' cum den
 bon & catale in eadm existend in Cym

a h. sup Thamesin usq London pres-
 a sup Ribum Thamesin pdia' caria-
 Obq postea & antequam idem Def.
 am pdia' cum denar bon & catalk in
 on existend a Cymba pdia' apud Lon-
 on pdia' deliberare potuit scit pdia'
 to die, (Ec.) Cymba pd' onerat cum
 a pdia' & denar bon & catalk in ea-
 m existend sup Ribum Thamesin pdia'
 risten videlt apud London pdia' in
 roch Sed Dunstani in Occidente in
 ard de Faringdon extra p magnu &
 volent imbrem & tempestat ex solo actu
 ei & absq aliquibus descid negligend
 de culpa ipsius Def. vel serbien suoz
 bmerla fuit ac cista pdia' cum denar
 on & catalk in eadem existend occone
 de in aquis Ribi Thamesis pdia' ob-
 ata submersa & amiss. fuer per qd idem
 Def. cistam pdca cum denar bonis &
 atall in eadem existend eidem Quer de-
 bare non potuit Absq hoc quod cista
 dia' cum denar bon & catallis in eadm
 risten p descum bon custod ipsius Def.
 el serbien suoz pdia' amissa fuer modo
 forma put eadm Quer supius inde
 erus eum queritur Et hoc, (Ec.) Un-
 (Ec.)

Vide Bro. Red. 101.

A Cto non, (Ec.) Quia dic qd pdia' T.
 A possessionat fuit de bonis & catal-
 is pdia' ut de bonis & catallis suis
 pp & sic inde possessionat existend (tali
 e & anno) apud L. (Ec.) bona & catal-
 a pdia' deliberavit quibusdam S. & H.

cisdem

Placitum en
 Trover quod
 Quer' licencia-
 vit estrang'
 impignorare
 bona & catalla
 ill' pro securi-
 tate solucon'
 denar' super-
 inde mutuat'.

Case.

eisdem S. & H. licentiando & authori-
 zando quod iidem S. & H. eadem boni-
 catall (p vera & secuta solucione cujus-
 dam pecunie summe quam ille vel eo-
 alter ab aliquibus mutuari contingit
 end ad diem & dies inter eos concordat
 impignozare potuerunt Et idem W. di-
 qd pdict' S. & H. de bonis & catallia
 pdict' possessionat existend postea scilicet
 (tali die & anno) apud L. (Ec.) mutua-
 fuissent de pstat W. tresdecim libras &
 decem solidi resolvendi eidem W. in festo
 Sed Johis Baptiste tunc pr' sequend
 pdict' S. & H. pro securitate solucio-
 dia' tresdecim librarum & decem soli-
 apud L. pdict' in paroch, (Ec.) bona &
 catalla pdict' eidem W. impignozave-
 quorum pmissorum pretextu bona & ca-
 talla pdicta ad manus & possessionem ipsius
 W. devener & pdict' tresdecim libras
 decem solidi eidem W. adhuc mie solu-
 existunt Et ulterius idem W. die quo
 ipse semp a pdict' die, (Ec.) Anno, (Ec.)
 supradicto paratus fuit & adhuc para-
 existit ad deliband bona & catalla pdicta
 & ille parat hic in Cur profert si pdicta
 S. & H. vel eorum altera pdict' tresde-
 cim libras & decem solidi solvere voluerim
 Et hoc, (Ec.) Unde, (Ec.)

Repl.

Qd' non licen-
 tiavit, &c.

Precludi non, Quia die qd ipse idem
 T. non licentiavit pdict' S. & H. bona &
 catalla pdict' impignozare modo & forma
 prout pdict' W. supius plicando allega-
 vit Et hoc petit qd inquiratur p Prim
 Et pdict' T. sitit, (Ec.)

Bar al Trover.

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Case:

Vide Thomp. Ent. 61. Treatise of Trover, 158.

Mod. Intr. 149. Non cul to part, and to
the Residue he pleads another Action in Bar,
and Recovery thereon. *Treas. Tro. 163.*

Defendant justifies as Bailiff of a College.
Red. 102.

Defendant says, the Goods were pawn'd to
him by the Plaintiff. *Rob. Entr. 43.*

Defendant, as Captain of one of the King's
Men of War, justifies seizing a Ship and
Goods as Prize merchandizing against the
Royal Prohibition. *Bro. Red. 69.*

Defendant justifies taking the Boat as a
Treck. *Rob. Ent. 445. 62.*

Defendant pleads Judgment upon a Verdict
in Trespass, &c. *Winch. Ent. 99.*

Defendant justifies seizing the Goods as for-
feited by Default of Appearance to the Bailiff
of Westminster. *Rob. Ent. 447. Vide Treas. Tro.*

81. Justification as Bailiff of a Court-Baron.

As to Bars and Pleadings in *Trover*, it is to
be observed that formerly they were of divers
sorts: As,

Bar,
by Release, *Vide Hens Pleader 123. 1 Browne*
387. 5 Rep. 27. 1 Cro. 49. 3 Cro. 171.
1 Roll. 730.

by Licence, *vide Thomps. 61.*

by Command, *Poph. 208.*

by Accord and Arbitrement, because Dama-
ges are only to be recovered.

by Outlawry, *3 Leon. 205.*

by Custom, *Rob. Ent. 26. Hern. 162.*

By

Case.

By Recovery in other Actions, *Winch. Entr.* 99, 100, &c. *Co. Entr.* 39. 5 *Rep.* 61. *V. Rep.* 2d Part 169.

By Execution, *Rob. Entr.* 451. *Cro. Eliz.*

By Demise, *Winch. Entr.* 31, 32.

By Attachments, 1 *Keb.* 211.

By Distress, 3 *Brownl.* 483. *Stiles Rep.* 12, *Cro. Jac.* 255. *Cro. Eliz.* 901. *Yelv.* 194.

By Sale, *Rast.* 675. *Rob. Entr.* 30.

— In Market-Overt, *Rast.* 675. *Winch.* 10 *Hern. Pl.* 251. *Rob.* 24, 25. 448. 9. 450.

1 *Brown* 387, 389. *Thomps.* 62, 69, 234

By Pledge, or Pawn, *Rob. Entr.* 43. *Hern.* 209.

As for Tythes, *Latch.* p. 8. 176, 184.

As a Waife, 5 *Co.* 109. *Cro. Eliz.* 611, 612. 1 *Keb.* 509.

As an Estray, *Co. Entr.* 40. *Cro. Eliz.* 7 &c.

General Issue.
Special Mat-
ter in Evi-
dence.

But now many of these are reduced to General Issue, *Not Guilty*, and the Special Matter may be given in Evidence, and for of them may be either Way.

First then, upon the General Issue it's the Defendant may give any Thing in Evidence, which proves the Plaintiff hath Cause of Action, or which doth entitle Defendant to the Thing in Question, 1 *283*. But generally a Justification or Excuse must be pleaded.

Custom to
take Toll.

The Citizens of *London* gave in Evidence their Custom to take Toll, *Jones* 240. And it's there said, Every Thing which proves Conversion legal, may be given in Evidence upon the General Issue.

That the Matter of an Estray may be Case.
pleaded Specially, or given in Evidence, up Estray.

Not Guilty.

The Defendants gave in Evidence, That Commission
the Goods were taken and sold by Vertue of of Sewers.
the Commission of Sewers, *Allen's Rep.* 92.

The Defendants gave in Evidence a Seizure Custom of
the Goods foreign bought and foreign sold, by Goods foreign
the Custom of *Lynn*. bought, &c.

In Trover ; That they were not the Goods Not the Plain-
the Plaintiff, is good Evidence. 5 *H.* 7. 3. tiff's Goods.

Per *Dodderidge*: In Trover and Conversion Bailment and
Goods, if the Defendant derive a Title Delivery.

from a Stranger, this amounts to the Gene-
ral Issue ; otherwise if from the Plaintiff,
186. And Bailment of the Goods to
another, and Delivery accordingly,
amounts to the General Issue, and may be
given in Evidence upon it. 3 *Bulstr.* 209.

Defendant may give in Evidence, That the Pawn, Di-
the Goods were pawned to him for 10 *l.* or that he stress, &c.
he retain'd them for Rent or Damage-feasant,
he took them as Tythes severed, or took them
a Sheriff in Execution.

If the Plea in Bar doth not answer the
Declaration in Trover, but amounts to the
General Issue, then it's said the Plaintiff may
demur ; but need not shew Cause of his De-
murrer.

But if the Defendant admits a Property in *Regula.*
the Plaintiff, he may plead any Special Mat-
ter to oust him of it, or to justify his doing.
And if the Plaintiff does not shew Cause of
Demurrer, that it amounts to the General
Issue, it will be for the Defendant : As where
the Defendant pleads a Sale by a Stranger in a
Mar-

Case.

Market-overt. The Plaintiff demurs generally and adjudged for the Defendant, that Cause ought to be shewn, 3 Cro. 485. *Comins and Boyer*.

Special Justification,
when.

He which will make a Special Justification ought to make it of such a Thing which is justifiable to be done without some Special Cause; otherwise his Justification will amount to the General Issue. 1 *Roll. Rep. p. 1. inter H and Hawkes*.

Justification by Distress for Damage feasant amounts to the General Issue. *Hob. 187. O Eliz. 4, 33.*

So by Distress for a Rent-charge, *Abbot* hoc that he converted them. Ill.

What Pleas
amount to the
General Issue.

In Trover for Corn; the Defendant made Title to them as for Tythes severed. The Plaintiff demurred Specially, because it amounted to Not guilty, and Judgment for Plaintiff: For this Action comprehending Title in it, such a Plea is not allowable. *Car. 157. 2 Bulstr. 204, 205.*

Trover for a Horse; the Defendant pleads that he being a common Inn-keeper took the Horse to Livery, at Rack and Manger, and the Horse died in his Custody. This Plea is to be ill, because it only amounts to Not guilty. 1 *Roll. Rep. 22.*

Trover for a Mare; the Defendant pleads That after the Trover alledged, he recovered the Mare to the Plaintiff, which he accepted. The Plaintiff demurs Specially, because it amounted to the General Issue, *2 die pro Quer. 2 Keb. 405, 437. Denny Terry.*

Plaintiff declares, That the Defendant found his Goods, and delivered them to persons unknown: *Non delibabit modo & forma* is no Plea; but he ought to plead Not guilty to the Wrong supposed. 1 *Leon.* 222.

For a Sale to Persons unknown, the Defendant pleads *Non vendidit modo & forma et hoc paratus, &c.* amounts to the General Issue. 1 *And.* 30. *Dyer* 121.

That the Plaintiff was not possess'd *Ut de donis propt* is no Plea, for he ought to plead *Non Cul* to the Misdemeanor, and give the other Matter in Evidence. 33 *H.* 8.

The Defendant pleaded, that the Plaintiff own'd the Goods to him for 10 *l.* and that he detained the Goods for 10 *l.* It's said to be no Plea, for that he ought to plead the General Issue, and give the Matter in Evidence; and the Defendant ought to plead Not guilty to the Wrong supposed. *Mod. Rep.* 8.

And it's said, that in this Action, every Rule of Evidence which proves the Conversion legal, may be given in Evidence upon the General Issue. *Mod. Rep.* 240.

And in 1 *Keb.* 303. *Twisden* said, there is no Plea in Trover, but a Release or Not guilty, every Special Plea in Justification being tantamount.

But vide *Ventris Rep.* 2d Part, p. 295. where on a Plea the Plaintiff demurred, and it was said that the Plea amounted to the General Issue, and that if the Matter would avail the Defendant, it might be given in Evidence. which it was answered, That it was no General Rule, that a Matter could not be pleaded

Case.

pleaded specially, which might be given in Evidence upon the General Issue: For in an Action of Debt for Rent, an Entry and Suspension of the Rent may be given in Evidence upon *Nil debet*; yet 'tis always allowed to be pleaded, and so *Nil huiusmodi*: And whenever the Matter pleaded contains Matter of Law, it is allowed to be pleaded, tho' it might be shewn upon the General Issue, *Hob. 127.* And of that Opinion were the Court, *Mich Anno primo Will & Marie.*

Regula.
Matter of
Law.

Where a Man
may plead
Specially or
Generally.

And it's said, a Man is allowable in Two Cases to plead Specially where he may plead the General Issue, and give the Special Matter in Evidence.

1. When a Defendant by his Plea doth admit some Colour of Action to be in the Plaintiff, but sheweth some Special Matter of Fact to avoid it, 10 Co. 88.

2. Where a Man pleads Matter of Law which admits the Fact, but is not proper for Jury, tho' it amounts to Not guilty.

Colour.

A Release is a Bar in Law, yet may be given in Evidence. It may be pleaded without giving any formal Colour, for that it implies that the Plaintiff might have his Action and the Defendant need not intrust a Jury with a Matter of Law, but refer it to the Consideration of the Court.

So in an Action of Trespass or Trover for taking away Goods the Defendant pleads he bought them in Market Overt: This is a good Plea, because it acknowledgeth that the Plaintiff

iff had a good Cause of Action, if it had not been for the Properties, being by Act of Law altered and vested in the Defendant. —

And that a Discharge in Law from the Action is most natural and proper to lay before the Court.

21 Ed. 3. fol. 17. To a Conspiracy, Defendant justifieth as an Indictor; yet upon Not guilty, this in Evidence would have discharged him.

Mo. 600. pl. 828. Plaintiff demurred, because the Defendant's Plea amounted to Not guilty; for the probable Cause was the Gift of the Action; and that answered the Doing of without probable Cause, and yet held good Plea and Justification. See 3 Cro. 871, 900. Cro. 130.

So *Kelway Rep. fol. 81.* and *Dyer 285.* he justified Specially, tho' he might have pleaded Not guilty, and the Special Matter would have fetched him off. But he would set forth legal Justification in his Plea, that he was under the Protection of the Law; and it was held to be sufficient. *Vide Bridg. fol. 130.*

So that it plainly appears by these last Authorities, that where the Defendants have Matter in Law to defend themselves by from the Plaintiff's Action, they may either save to themselves the Benefit of that Defence, upon the General Issue, or plead the Special Matter, and it shall be a good Justification in Law. But however it is in Trespass, yet 'tis good to be cautious here in these Things; for seeing that this Action almost all are resolved into the General Issue, and to give the Special Matter

Case.

in Evidence, look to it for what Purpose you plead specially.

Colour.

Vide 10 Co.
Leyfeild's Case
touching Co-
lour.

Also in 2 *Balst.* p. 134. It's said no Colour will serve in this Action, but that he ought to traverse the Plaintiff's Title. Yet it appears otherwise by 10 Co. *Leyfeild's Case*; and he that claims in a Market-Overt, shall not give colour if he pleads generally: But if he pleads that *J. S.* was possessed as of his own Goods and sold them in a Market-Overt, or waived them, there he shall give Colour, because he confesseth no Interest in the Plaintiff; yet no Colour shall be given where it goeth to the Bar of the Right, for it would be in vain to give Colour of Right, and to bar him if he had Right.

Also it's said, That in Trespass, Colour of Possession given by the Defendant to the Plaintiff sufficeth, because the Declaration is general upon a Supposal, without any certain Title; and that it is sufficient to answer a Supposal with a Colour of Possession only. But that in Actions of Trover, and in all other Actions where the Plaintiff makes Title to the Thing demanded, or to a Thing for which he demands Damages, there the Defendant ought to make a better Title to himself, and to traverse the Title of the Plaintiff, or else to confess and avoid it. *Yelv.* p. 174.

Traverse.

In Trover and Conversion, the Conversion is traversable, and therefore Time and Place of a Conversion must be set down in Pleading. 1 Cro. 97, 201, 555.

And the Conversion is said to be seldom traversable, except in a Special Matter, as where *A.* lends Money to *B.* and *B.* delivers him a Pawn for it, here the Conversion is traversable.

So where the Plaintiff pleads, that the Money was delivered to him to keep it till *A.* and *B.* were agreed who should have it; and that *A.* and *B.* were not agreed, *absq; hoc*, that he converted it, &c. 1 *Leon.* 247. 2 *Leon.* 94. 3 *Bulst.* 307.

1 *Leon.* 189, 222, 223. The Property is not traversable, nor the Knowing.

Yelv. p. 199, 200. Matter in Law is not traversable.

Where a Justification in Trover ariseth upon a Sale, there needs no Traverse of any more than the Place alledged, and not the whole County: But if it be transitory, as in Trespass, Battery, taking Goods, &c. there the whole County must be traversed. *Brownl. Rep.* 17. But this is only upon a Special Justification, by reason of his Office, or such like, *Roll. Rep.* 44. *Vide* 3 *Bulst.* 209.

When the Defendant in Trover pleads *Non* Property proved. *Cur.* the Plaintiff must prove his Property in the Goods.

Where a Man claims not any Interest, but justifies by Command or Authority derived from another, the Plaintiff may reply *De in- curia sua propria*; but 'tis no Repl' where the Defendant justifies by claiming Interest in the Freehold to himself.

Disturbance
of Burial.

Bar.

*Prescription de
payer 6 s. 8 d.
pro fractione
soli in Ecclesia.*

*Travers del
prescriptions en
le Count.*

Et p̄dict' G. p — Attornd suum vend
& defend' vim & injur' quando, &c.
& dic' qd' p̄dict' R. actionem suam p̄dict' vera
sus cum here non debet quia protestan
do quod p̄dict' R. & omnes illi quorum
statum idem R. modo het de & in Ma
nerio p̄dict' cum p̄tin' ac firmarii & te
nentes sui p̄dict' Capitalis Meduagii
cum p̄tin' a toto tempore supradic' non
sustentaverunt & reparaverunt Insu
lam p̄dictam sumptibus suis propriis
de tempore in tempus toties quoties ne
cesse foret ac racōne inde non solum loca
sedes p̄ seipsis & famulis suis in eadem
Insula ad audiendū divina servicia in
eadem Ecclesia celebrandū per totum
tempus supradictum huerunt put p̄
dictus R. p Breve & Pare sua p̄dict' su
pius suppon' p p̄lito die quod omnes
singule p̄sone que corpora aliquorum de
functorū infra Ecclesiam p̄dictam sive Can
cellam vel aliqua loca Ihes Ecclesie p̄
sepeliri desideraver' & Sepulturam p̄
inde obtinuer' solverunt & per totum
tempus supradictum solvere consueve
runt sex Solidos & octo Denar pro fra
cōne soli in Cancellam vel tres Solidos
quatuor Denar in Pavi Ecclesie Vicari
& Incumbenti Ecclesie p̄dict' ejusve fir
maris aut Deputato p tempore exite
Absq' hoc qd' p̄dict' R. & omnes illi qu
rum statum idem R. modo het de & in
Manerio p̄dicto cum p̄tin' ac firmar

tenentes sui p̄dicte Capitalis Mesua-
gii cum pertinen a toto tempore supra-
dicto corpora defunctorum in p̄dicte Capita-
li Mesuagio moriend infra eandem In-
sulam sepeliver & ibm p̄o conveniend se-
pultura Corporum eorundem defunctorum
in eodem Capitali Mesuagio moriend se-
pulchra (vocat Graves) in eadem Insula
ad eorum libitum fecerunt & fieri con-
sueverunt absq; aliquo p̄inde reddendo
aut solvend Vicario aut alicui alio In-
cumbenti Ecclesie Parochialis p̄dicte
ejusve seu eorum alicujus firmario aut
deputato p̄o tempore existend put p̄dicte
R. per Breve & Hare p̄dicte supius sup-
pon Et hoc paratus est verificare Unde
perit iudicium & p̄dicte R. accōnem suam
p̄dicte versus eum here debeat, &c.

Et p̄dicte R. die q̄ ipse p̄ aliqua pal-
legat ab accōne sua p̄dicte hēnd p̄cludi
non debet quia ut prius die q̄ ipse &
omnes illi quorū statum idem R. modo
de & in Manerio p̄dicte cum ptinen
firmarii & tenentes sui p̄dicte Capita-
li Mesuagii cum ptinen a toto tem-
pore supradicte corpora defunctorum in p̄dicte
Capitali Mesuagio moriend infra ean-
dem Insulam sepeliver & ibm p̄ conve-
niend sepultura corporum eorundem defun-
ctorum in eodem Capitali Mesuagio mo-
riend Sepulchra (vocat Graves) in eadem
Insula ad eorū libitum fecerunt & fieri
consueverunt absq; aliquo p̄inde red-
dendo aut solvendo Vicario sive alicui
Incumbenti Ecclesie Parochialis
p̄dicte ejusve seu eorū alicujus firmar aut

Repl.
Et Issue sur le
prescription.

Case.

Deputato pro tempore existend put idem
 R. superius versus eum queritur Et ho
 petit qd inquiratur p Patriam Et p dicit
 G. similiter No pcept est Dic quod venie
 fac hic, &c.

Vide Co. Entr. 8.

*Note, If a Man and his Ancestors, Time
 out of Mind, have had an Isle in a Church for
 Seats, and the Burial of such as die in his
 House, as appendant to his House, and the
 Parson, Vicar, or any Stranger disturb him
 therein, he may have an Action on the Case
 New Book of Entries, 9.*

*Plit' ad Narr'
 pur disturbance
 in sedeli Eccle-
 sie qd def. ha-
 bet sedem in
 Cella Ecclesie
 & travers' qd
 omnia loca per-
 tin' ad quer'.*

A Cto non, &c. Quia die qd ipse p dicit
 J. est & p quatuor annos jam u
 elaps' fuit & adhuc existit scilicet de &
 uno antiquo Mesuagio (vocat, &c.) cu
 ptin' in Parochia de B. in Dñico sc
 ut de feodo Quia idem J. & omnes A
 tecessores sui & omnes illi quorund statu
 idem J. het in eodem Mesuagio cum po
 tin' a tempore cujus contrarii memo
 homin' non existit fuer & here consu
 bet libtat sedendi genuflectendi & stan
 in uno loco (Anglice Room) in quoda
 sedeli ab antiquo erect' & situat in Cell
 pdice in pdict' occident' pte Ecclesie pdi
 diebus Dominicis & Festival ac ali
 diebus in quibus Divin' Servicium a
 Verbu Dei in Ecclesia pdict' lect' pdic
 aut Sacra in Ecclesia pdict' celeb
 fuer ad eadem Divin' Servicium & Ve
 bum Dei in Ecclesia pdict' lect' pdicat
 sacra celebrat in eodem sedeli intendo

audien tanquā ad Mesuagiū illud per-
 tinen p qđ idem J. pđia', (Ec.) & di-
 versis diebus & vicibus pđia' superius
 p̄ficat in sedeli pđia' sedebat put ei
 bene licuit Absq; hoc qđ pđia' C. omnia
 loca & sedilia in Cella pđia' p̄o seipō &
 famulis suis diebus Dominicis & Fe-
 stival & aliis diebus in quibus Divinū
 Serviciū aut Verbu Dei in Ecclesia
 pđia' lect' sive pđicat aut Sacra in Ec-
 clesia pđia' celebrat fuer sedendi genu-
 tendi & standi & eadem Divinū Ser-
 viciū & Verbum Dei in Ecclesia pđia'
 & pđicat & Sacra celebrat in eodm
 intendē & audien fuit & a tempore
 p̄p̄adco here consuebit put pđia' C. su-
 perius versus eum narrabit Et hoc,
 (Ec.) Unde petit Iudiciū si Acto, Ec.
 Vide Bro. Red. 96.

Ec pđia' C. D. per J. R. Attozū *Disturbance de
 Chymin.*
 suū veni & defend vim & injur
 ando, Ec. Et die qđ pđia' C. D. actio-
 nem suam pđia' versus eum habere non
 debet quia die qđ ipsemet pđco tempore
 qu, Ec. fuit seisc de pđcis duabus par-
 celis terre cum ptinen (vocat Southmore
 & Northmore) in Dominico suo ut de
 pđco Et sic inde seisc existens idem C. D.
 pđco tempore quo, Ec. easdem parcel-
 las terre cum ptinen inclusit put ei
 bene licuit Absq; hoc qđ pđcus nuper
 p̄ur & omnes Antecessores sui ac om-
 nes illi quozum statum idem nup Dur
 habuit de & in pđcis Mesuagio & du-
 ctu acris terre a tempore cuius con-
 tract

Case.

trac memoria hominum non existit
 buerunt & habere consueverunt p
 firmariis & tenent suis eorumd n
 suagii & centum acrarum terre qu
 dam viam tam pedestrem qm equestre
 omni tempore anni cum omnibus &
 nimod carriagiis suis in super & ul
 pdictas duas parcelle terre ipsius C.
 (vocat Southmore and Northmore) in
 pdicta a Messuagio & ducent acr te
 pdicta eundo & cum cariagiis suis ca
 and usq pdictum Parco ipsius nu
 Ducis (vocat Greatham Park) in C
 pdicta & ab eodem Parco usq ad pd
 Messuagiū & ducent acr terre a t
 tempore supradicto redeundo & cum
 riagiis suis recariand tanguam eid
 Messuag & ducent acr terre cum per
 nem prout predicta C. P. p Breve & p
 suam pdicta superius suppon, Et
 parat est verificare Unde per Iudiciu
 si pdicta C. P. acton suam pdicta ver
 eum here debeat, &c.

Repl.

Et pdicta C. P. die qd ipse p aliq
 pallegat ab actone sua pdicta hend pclu
 non debet, Quia ut prius die qd pd
 nuper Dux & omnes Antecessores
 ac omnes ill quorum statum idem n
 Dux habuit de & in pdicta Messuagio
 ducent acr terre a tempore cuius conte
 memoria hominum non existit hueru
 & here consueverunt p se firmariis
 tenentibus suis eorumd Messuagii &
 cent acrarum terre quandam viam ta
 pedestrem qm equestrem omni temp
 a. ni cum omnibus & omnimod cari
 gi

is mis in super & ultra pdias duas
cellas terre pdia' C. D. vocat S. &
in G. pdia' a Messuagio & ducenē
terre pdia' eundo & cum cariagiis
cariand usque pdia' Parcum ip-
nup Ducis (vocat G. Park) in Com
& ab eodem Parco usq; ad pdia'
messuag & ducenē acr terre a toto tem-
supradto redeundo & cum cariagiis
recariando tanquam eidem Mes-
sagio & decenē acr terre cum ptinenē
iple p Breve & Parc sua pdia' su-
suppon, Et hoc pet qđ inquirat
p Patriam, Et pdia' C. D. sūie
pcept est Die qđ Venire fac hic in
tabis Scđ Martini xii. Ec. p quos,
Et qui nec, Ec. Ad recogn, Ec. Quia
m, Ec.

Co. Ent. 12. Bar qđ pater Quer de-
h. Licentiam ad includenē partem
ad & Del' ut ejus Servien eandem
chust & inclus' custodivit. Winch.
77.

Bar p Cons Tenentibus in feodo
audere terras jacen in Campis & eas-
in sepaltate custodire Rept de in-
ppd, Et traverse le Custom, Et
sue inde, Hans. 23.

Note, If a Man, Time out of Mind, has
a Way to his House, Ground, Common,
other Place by Custom, Prescription,
assent, or otherwise, and another Person
turb or hinder him in it, he may have an
tion on the Case. See 1 Cro. 427, 619.
Cro. 673. Yelv. 159. Hutton 27. 2 Bul. 121:
737, 120.
Ho

Case.

He that claims such a Way, must present for a *quo termino ad quem*, for he may not go over my Ground, but to the right Place. *Hob. 254.*

If *A.* have a Way over the Close of *H.* and *H.* sows the Close, and leaves a Way in another Part, yet he may justify to go where ancient Way is, and is not bound to go in new. *Noys Rep. 128.*

Custom.
Plitum' qd'
Rectores &
Firmar' usi
fuer' Carriare
Decimas ad sua
propria onera
& travers le
Custom al-
ledge per
Quer'.

Et *pdia' C. D. p* — *Atqz* *sud* *&* *Defend' vim & injuriam* *quod*, *Et* *dic' qd' pdia' G. accionem* *suam pdia' inde usus cum here seu n* *nutener' non debet quia dic' qd' bene* *sum est qd' idem C. p pdia' spaci* *quinqz annoz jam ult' pfit' & amplius* *possessionat fuit & adhuc possessionat e* *st de pdia' trigine acris terre cum p* *tin' jaced' & existend' in D. pdia' put* *dia' G. p narracionem suam pdiam su* *rius suppon', Et idem C. Protestat'* *qd' ipse non messuit collegit & uni* *tanta blada de & ex pdia' trigine ac* *terre quant' pdia' G. superius narra* *allegavit p placito idem C. dic' qd' p* *bendar' prebend' pdia' & eorum firm* *inde pro tempore existend' a toto temp* *supradico usi fuerunt colligere & car* *are ad onera sua ppria omnes decim* *granor' pben' pdia' spectand' de* *terris ubi grana illa crescebant ubicu* *eis placeret, Absqz hoc qd' infra Vill* *de D. pdia' est & a tempore cujus o* *trarii memoria hominum non exi* *fuit quedam antiqua consuetudo us*

appbat qđ omnes possessores firma-
 si sive Occupatores aliquarū terrarū
 erent & existen in R. pđia' existen par-
 cel rebentōn pzebendū de B. pđia' a tem-
 pore cujus contrarii memoria hominū
 non existit usi fuerunt & consuever car-
 rare (Anglice to lead) quemlibet decimū
 mulum (Anglice Shock) grani quoli-
 bet Anno crescēd super aliquibū ter-
 ris in R. pđia' existen parcel rebentōn
 pzebendar de B. pđia' a loco sive locis
 ubi grana illi crescebant usq; ad pđicūm
 greum (vocat the Barn) pzebendū pđia' in
 pđia' p usu pzebendar pzebendū pze-
 bendar sive ejus Deputat & firmat decima-
 m pđicarum p tempore existen modo
 forma pout pđia' G. superius inde
 citando allegabit, Et hoc parat' est
 ostendere unde petit Iudicium si pđia'
 actionem suam pzedictam inde versus
 C. hēre seu manutencere debeat, &c.

Et pđia' G. dic qđ ipse p aliqua p pđ
 superius placitando allegat ab ac-
 tione sua pđia' inde versus ipm C. hēndū
 Iudi non debet quia ut prius dic qđ
 tra Villam de R. pđia' est & a tem-
 pore cujus contrarii memoria hominum
 non existit fuit quedm̄ antiqua consue-
 do usitat' & appbat qđ omnes posses-
 sors firmat sive occupatores aliquarū
 terrarū jacent & existen in R. pđia' exi-
 stent parcel rebentōn pzebendū de B. pđia'
 tempore cujus contrarii memoria ho-
 minū non existit usi fuer & consuever car-
 rare (Anglice to lead) quemlibet decimū
 mulum (Anglice Shock) grani quoli-
 bet

Repl.
 And Issue for
 Traverse.

Bar al Disturbance.

bet anno crescent super aliquibus terris
in P. p̄dict' existend parcelle revent
p̄bendi de B. p̄dict' a loco sive loci
ubi grana ill' crescebant usq; ad p̄d
horreum (vocat the Tythe-Barn) p̄be
p̄dict' in P. p̄dict' p̄ usu p̄bendar p̄
bendi p̄dict' sive ejus Deputat' aut f
mar Decimarum p̄dca p̄ tempore c
sic modo & forma put ipse idem G.
perius inde narrando allegabit, Et
petit qđ inquiratur p̄ p̄iam, Et p̄
C. similt Jo, &c. Vide Thomps. 75.

Mich. 44 Eliz.

For disturb-
ing the She-
riff in his
Execution.

AN Action upon the Case brought, sup-
sing that one G. Berisford was indebted
unto the Plaintiff by a Statute Staple in 20
and that he sued Execution; and that the S
riffs of London, by Force of the Writ, imp
nelled a Jury to enquire what Goods,
and that there were divers Goods of the
G. Berisford in such a House in London, and
the Sheriff came with the said Jury to have
View of them, and to appraise and seise them
for this Debt; and that the Defendant p
missozum non ignarus, shut the Door,
disturbed him to make Execution, &c. The
Defendant entitles himself to the Possession
the House, by reason of a joint Lease made
unto him and one G. Berisford, and that
had it by Survivorship, and that he shut
Door for the saving his Possession. The Pl
tiff replies, That the said G. Berisford, menti
ed in the Bar, and he who was bound by
Statute, were the same Person. Defendant

rred— The chief Question was, Whether
 the Shutting the Door was a Disturbance of
 the Execution? And whether the Plaintiff might
 thereupon maintain this Action? And first it
 was agreed by the whole Court, That upon a
Capias ad satisfaciendum, the Sheriff
 may not break open any Man's House to make
 Execution, but he is punishable for doing it;
 but upon a *Capias utlagat*, he may well
 break open any Man's House to apprehend him;
 and no Place ought to protect him against the
 Law, and he being out of the Law, shall not
 have the Protection of the Law. But whe-
 ther he might upon a *Fieri facias*, or *Ex-
 ecuti fac*, break the House of any to make
 Execution, they doubted; but there is no Doubt,
 that the Door be open, but that the Sheriff might
 enter, for the Law gives him Authority thereto,
 and an Executor may enter to take Goods left
 by the Testator: And for this Cause,
Wray and Popham held, That the Action here
 lay, because by this Shutting of the Door,
 the Party was disturbed to have his Execution.
Fenner & Telverton e contra; for the Goods
 being in the Defendant's House, who is a
 stranger to the Execution, he is not bound to
 have Cognizance of the Sheriff's Intent in
 coming to make Execution, and his Shutting
 the Door was lawful; and altho' there was Loss
 to the Plaintiff, yet it was *dampnum sine
 injuria*; and it appears not the Goods of
 the Conizors, which are in the Defendant's
 House, came thither, and if they were taken
 from the Defendant as a Trespassor, the Party
 whose Goods they are, or the Sheriff upon
 Execution, may come within the House, if
 the

Case.

the Door be open, to seise them, because Defendant had them by unlawful Means; if the Defendant had taken them by lawful Means, *viz.* by Bailment or otherwise, whether the Party himself, nor the Sheriff, come within the House to seise them; therefore the Shutting of the Door is no Cause of Action for the Plaintiff, and therefore Action lieth not, &c. and it was adjourned. And afterwards, in Mich 20 Jacobi, the Case was argued again, and then *William Fenner* in omnibus, and that the Sheriff might not break any Man's House to take Execution unless in the Case of the King, or for a Contempt, &c. and thereupon it was adjudged for the Defendant. *Vide 1 Cro. 908. Seyn and Gresham. Vide postea.*

Note, An Action of the Case will lie against him that shall hinder, disturb, or prejudice him that hath the Franchise, or Liberty of the Execution, and Return of Process in the Hundred, or other Place. *F. N. B. 95. 1 Orig. 103, 104.*

So if a Man be disturbed to take the Process of his Office. *1 Cro. 548. Popb. 141.*

So against him that shall disturb an Officer in the Execution of his Office; as in the detaching or Distraining of Goods, *N. B. 102* and lieth either for the Officer, or for the Plaintiff in the Suit.

So it's said, if one hinder an Officer in the Execution of his Office at my Suit; where the Sheriff shall come to another Man's House, where the Goods of the Defendant are, and the Door of the House being open, and

other Man, not the Owner of the House, doth shut the Door and keep him out, or the Owner of the House, or another Man, shall convey away the Goods, and prevent my Execution, I may have this Action against him. But if a Man do so in his own House, or to prevent the Execution upon his own Goods doth this, no Action will lie. 5 Co. 91. 1 Cro. 208, 309. *Hill. 20 Jac. B. R. Wood's Case* adjudged.

So it's said, If I have an Execution against the Goods of *J. S.* and he hath Goods in the House of *K. L.* and the Sheriff comes to the House, and tells *K. L.* what he is, and wherefore he comes, and desires him to open the Doors to him, and he keeps him out that he cannot do Execution, I may have this Action against *K. L.* 5 Co 93.

So if an Officer be coming to arrest a Man, and attach his Goods at my Suit, and another Man convey away the Goods, or the Person, so that the Officer cannot do his Work, I may have this Action. *F. N. B.* 102. 21 *H.* 7. 40. 3 Ed. 3. 3.

Disturbance in Office.

THE Plaintiff declares, That Sir *J. A.* was seised of the Manor of *M.* and of another Manor, and granted to the Plaintiff by deed to be the Bailiff of the said Manor for life; and that the Defendant had disturbed him in his said Office, in his collecting of Rent, viz. of the Rents of *S.* and *D.* &c. Defendant confesseth the Seisin of Sir *J. A.* and his Grant to the Plaintiff, but that afterwards

Case.

he sold the said Manors to J. S. who appointed the Defendant to be Bailiff there, and thereupon he collected the Rents, &c. Plaintiff demurs: And 'twas the Opinion of the Court, That the Purchaser of the Manors might discharge the Plaintiff, and revoke the Grant, altho' it were for Life, because he sheweth not that there was any Fee granted in the Execution thereof, nor that he had any other Profits by exercising of it, for without Profits it is but an Office of Trouble; and then the Plaintiff hath not any Cause to complain, when he hath not any Loss; but if he were to have had a Fee, or other certain Profits for the executing thereof, it had been otherwise, therefore it was adjudged for the Defendant. *Vide 1 Cro. 859. Harvey and Newlyn.*

Disturbance
de Com'on--
Defendant
plead *Quoad*
part non cul'
quoad resid'
plead Bar. Pro
Coia' apper-
tinen' per cons'
manerii & in
terra quer'
causa Vici-
nagii.

ET p'dict' C. p. J. S. Attornd su-
ben & Defend vim & injur qu-
do, &c. Et quoad positonem aliqu-
porcornd seu biden in p'dicta pecia pas-
(vocat Basingham Common) ac dep-
conculcaton & consumpcon herbe p'dict'
ihm cum porcis & bidentibus p'dict'
qd ipse in nullo est inde Culpabilis p-
ut p'dict' G. superius versus eum qu-
tur, Et de hoc pon se super priam,
p'dict' G. similie, Et quoad positonem
equorum vaccar & bobium p'dictorum
eandem peciam pastur (vocat Basing-
Common) ac depast' conculcaton & con-
sumpcon herbe p'dict' in eadem c-
equis vaccis & bobus p'dictis super-
fieri suppoie die qd p'dict' G. accionem
suam p'dict' inde versus eum here n-

debet

debet quia dic' qd' bene & verum est qd'
 p'dia' nuper Episcopus Norwic' fuit scit'
 p'dia' Manerio de Churgaton cum
 in Dñico suo ut de feodo in jure
 Episcopatus sui p'dia' unde p'dia' Messu-
 agium & quinq; ac' tre cum p'tin' sunt
 a tempore cujus contrarii memoria
 homin' non existit fuerunt parcelle & a
 tempore supradicto dimissa & dimis-
 silia p' Copiam Roslorum Cur' Manii
 per Dominum Manii illius vel
 benescallum suum Cur' ejusdem Manii
 tempore existend' cuicunq; persone sive
 quibuscunq; personis illa capere volenti
 vel volentibus in feodo simplici ad Ter-
 minum vite vel annorum ad volun-
 tem Dni scdm' consuetudinem Manii
 p'dia', Qd' p'dia' nuper Episcopus &
 hies ille quorum statum ipe habuit in
 p'dia' cum p'tin' unde, &c. pro
 suis custumariis p'dia' Messu-
 agium & quinque acraz tre cum p'tin'
 erant & a tempore cujus contrarii
 memoria homin' non existit h're consue-
 communiam pastur' in p'dia' pecia
 re (vocat' Basingham Common) pro
 quibus equis vaccis & porcis suis
 p'dia' Messuagio & quinq; ac' tre
 p'tinend' levan' & cuban' quolibet An-
 ni tempore Anni tanqm' ad p'dia'
 Messuagium & quinq; ac' terre
 p'tin' spectan' & p'tinend' qd' p'dia'
 Episcopus de Manio p'dia' cum
 unde, &c. in forma p'dia' scit'
 ad p'diam Cur' suam Manii sui
 tenet apud Manium illud p'dia'

Where one
 prescribes for
 Common ap-
 purtenant and
 does not say,
Pro averiis le-
van', it's ill.
2 Saund. 335
&c.

die Venris proxim ante pdia' festum
 Sed Michis Archi Anno, (Ec.) supra
 dicto p pdia' D. III. ad tunc Senescal-
 lum suum Cur Mañii pdia' concessit
 prefat' G. pdia' Messuagium & quin-
 ac terr cum pertin habend sibi & her-
 dibus suis ad voluntatem Dñi sedm con-
 suetud Mañii pdia' qd q pdia' G. vi-
 tute ejusdm concessionis in pdia' Mes-
 suagium & quin q ac terr cum perti-
 intrabit & fuit & adhuc est inde scit
 in Dñico suo ut de feodo ad voluntatem
 Dñi Sedm consuetud Mañii p pnt
 G. p hze & Parr sua pdia' superius su-
 pon set idem G. ulterius die qd a
 pdia' primum diem Mañi Anno Reg-
 dia' Dñi Regis nunc quinto suprad-
 necnon eodm primo die Mañi ac a
 tempore cujus contrarii memoria
 mid non existit quedam communis
 stur (vocat Barningham Common) in T
 Barningham pdia' contigue adiacebat
 pecie pasture (vocat Basingham Comm
 absq aliqua separatione aut divisi-
 cum sepibus aut aliis clausuris
 eandm pasturam (vocat Barningham Co-
 mon) & pdia' pasturam (vocat Basing-
 Common) Qd q pdia' W. III. Ar
 pdia' primum diem Mañi Anno Reg-
 dicti Dñi Regis nunc quinto suprad-
 ac eodm primo die Mañi fuit scit
 Mañio de Town Barningham cum per-
 in Com pdia' unde tñ pdia' com-
 nis pastur (vocat Barningham Comm
 qm und Messuagiu und Gardinu
 Pomariu & due ac. & dimidium un-

ac & dimidium unius rode terre cum
 pertin in C. in Com pdia sunt & a tem-
 pore cujus contrarii memoria homin
 non existit fuerunt parcelle in Dñico
 suo ut de feodo qđq pdia Messuagium
 Gardinum Pomarium & due Acr terre
 dimid unius rod terre cum pertin sunt
 & a toto tempore supradicto fuerunt te-
 nementa custumar pdci Mañii de C.
 ac dimissa & dimissibilia p Copiam
 Hořoz Cur pdci Mañerii de C. p
 Dñum Mañii illuz vel p Senescallum
 suum Cur ejusdm Mañii p tempore exi-
 stent cuicunq persone sibe quibuscunq
 personis illa capere volenti vel volenti-
 bus in feodo simplici aut alie ad volun-
 tatem Dñi Scdm consuetud Mañer pdia
 pdictusque W. W. de pdco Mañio de C.
 cum pertin unde, &c. in forma pdia
 sic existend ante pdia primum diem
 Maii Anno quinto supradicto scilicet ad
 Cur ipsius W. W. Mañii sui pdia tent
 apud Mañium illud die Martis decimo
 octavo die Marci Anno (&c.) p copiam
 Hořozum Cur pdia Mañii de C. con-
 cessit eidm C. pdia Messuagium Gar-
 dinum Pomarium duas acras dimi-
 dium unius ac & dimidium unius rode
 terre cum pertine hendi & tenend eidm
 & & heredi suis ad voluntatem Dñi
 scdm consuetud pdia Mañii de C. vir-
 tute cujus concessionis idem C. ante
 pdia primum diem Maii Anno quinto
 supradicto in eadn Messuagium Gardi-
 num Pomariū duas acras & dimid uni-
 us ac & dimid unius rode terre cu

pertineñd intrabit & fuit & adhuc est
 inde seie in Dñico suo ut de feodo a
 voluntatem Dñi scdm consuetudinem
 pdicti Mañii de C. Et idem C. ultiu
 die qđ infra pdictum mañiu de C. ha
 betur & a tempore cuius contrarii me
 moria hominum non existit hebat
 consuetudo qđ omnes & singuli tene
 cularii pdictorum Messuagii Ga
 dini Pomarii duarum acrarū & dimi
 ac & dimidi unius rode cum perti
 fuerunt & a tempore cuius contrari
 memoria hominū non existit here co
 sueber communiam pasture in pdi
 pastura (vocat Barningham Common) cu
 oibus averiis (vocat Horse-beasts a
 Neat-beasts) sup eisdem Messuagio Ga
 dino Pomario duabus ac & dimidio un
 us ac & dimidi unius rode terre cu
 pertiñd lebañ & cubañ quolibet an
 omni tempore anni tanquam ad ead
 messuag gardin pomariñ duas ac &
 dimidi unius ac & dimidi unius ro
 terre cum ptiñ spectan & pertiñ p
 idem W. W. & omnes illi quoz sta
 idem W. Het & pdco primo die M
 Anno quinto suprad huit in pd Mañ
 de C. a toto tempore supradiao fueru
 & here consueverunt pro tenentibus su
 culariis pdictorū messuagii gardi
 pomarii duarū acrarū dimidi unius a
 & dimidi unius rode tre cum pertiñ
 eñiam pastur in pdca peticia pasturē (v
 cat Basingham Common) pro oibus
 oñiod averiis suis (vocat Horse-be
 and Neat-beasts) super eisdem messuag

gardino pomario duabus acris dimidi
 unius acre & dimidi unius rode terre
 cum ptin leban & cuban quolibet anno
 omni tempore anni causa vicinagii Quia
 pdict' nuper Episcopus & omnes
 predecessores sui & omnes illi quorum sta-
 tum idem nuper Episcopus fuit in pre-
 dicto messuagio & quinqz acris ter cum
 ptinen in Parr pdict' supius spec a
 to tempore supradicto in simili modo
 fuerunt & here consueverunt coiam pa-
 tur in pdicta pastura (vocat Barningham
 Common) p oibus & omiodi averiis suis
 vocat Horse-beasts and Neats-Beasts) super
 pdictum messuagio & quinqz acris tre cum
 leban & cuban quolibet Anno omni
 tempore Anni causa vicinagii, Et idem
 ultius die qd ipse antea pdictum pri-
 mum diem Maii Anno quinto supradicto
 pdictis Messuagio pomario duabus
 acris dimidi unius acris & dimidi unius
 rode terre cum ptinen in forma pdict'
 tunc seie existen posuit equos vaccas &
 oves suos in Parr pdict' supius speci-
 cat tunc existen leban & cuban sup
 pdictum messuagio gardino pomario dua-
 bus acris dimidi unius acre & dimidi
 unius rode terre cum ptinen in pdict'
 pastur (vocat Barningham Common) ad
 erbam in eadmd pastura tunc crescen
 pascen utendo coia pdicta ibm ac pdi-
 qui vacce & hoves ipsius & pdicta pri-
 mo die Maii Anno Regni dicti Dni Re-
 gis nunc quinto supradicto a pdict' pa-
 stura (vocat Barningham Common) in pre-
 dictam peciam pasture (vocat Basingham

*Causa vici-
 nagii mitter
 eins de ses
 vers.*

Case.

Common) intraver & herbam pdictam
tunc crescent a pdicto primo die Martii
Anno quinto supradicto usque pdicto tricesimo
diem Martii tunc primo sequenti
dixit diebus & vicibus continuando de
pasti fuerunt conculcaverunt & consumpserunt
utendo cōia pdicta ibidem causa vicinagii
Que quidem intro pdictorum equorum
bobum & vacarum ipsius Edmundi in
pdictam peciam pasture (vocat Basingham
Common) ac depast conculcacio & consump
cio herbe pdicta ibidem cum equis vaccis
& bobus illi sunt eadem positi equorum vacarum
& bobium in pdictam peciam pasture
(vocat Basingham Common) ac depast
conculcacio & consumpicio herbe ibidem cum
predictis equis vaccis & bobus unde
pdicta G. superius dicitur cum se modum
queritur, Et hoc parat est verificare unde
de petit iudicium si pdicta G. actionem
suam pdicta inde versus cum here de
beat, &c.

Repl.

Et pdicta G. quoad pdicta plitum pdicti
Edmundi ad positionem pdicta equorum vacarum
& bobium pdicta in pdictam peciam
pastur (vocat Basingham Common) ac depast
conculcacionem & consumpcionem herbe
pdicta in eadem cum equis bobus & vaccis
pdicta superius in barram plitae de
quod ipse per aliqua in eodem plito preall
gat ab actione sua pdicta inde hendi p
di non debet, Quia Protestando quod pdicta
pdicta G. pasture (vocat Barningham Com
mon) in barra pdicta G. superius spec no
est pcell pdicta manii de Town Barnin
ham protestando etiam quod infra idem
manium

Protestando.

mañum de Town Barningham nulla he-
 nec a tempore cuius contrarii me-
 moria hominū non existit habatur talis
 consuetudo qđ omnes & singuli tenenđ cu-
 marii pđictorū messuagii gardini po-
 rari duarū acrarū & dimidū unius acr-
 dimidū unius rode terre cum pertinenđ
 erunt & a toto tempore cuius contrar-
 memoria hominum non existit habere
 consuever cōiam pasture in pđict' pastu-
 (vocat Barningham Common) cum om-
 nibus aberiis suis (vocat Horse-beasts
 & Neat-beasts) super eisdem messuagio
 gardino pomario duabus acr dimidū
 unius acr & dimidū unius rode terre cum
 pertinenđ spectanđ & ptinenđ ptestandoq;
 etiam quod pđict' cōis pasture (vocat
 Barningham Common) pđict' pecie pasture
 (vocat Basingham Common) non contigue
 jacet put pđict' Edus supius allegabit
 pposito dicit qđ pđict' E. pđicto primo
 Maii Anno quinto supradicto de in-
 sua propria equos vaccas & hoves
 pđictos in pđictam peciam pasture
 (vocat Basingham Common) posuit ac her-
 um pđictam ibi tunc crescendū cum equis
 & vaccis suis pđictis depast fuit
 & conculcabit & consumpsit depast concul-
 cationem & consumptionem illē herbe pze-
 p tempus pđictum in narratōe pze-
 superius mentionat' diversis diebus
 vicibus continuando put ipse supius
 us cum queritur, Absq; hoc quod
 W. W. & omnes illi quorū statum
 W. W. her & pđict' primo die Maii
 Anno quinto supradicto fuit in pđict'
 mañio

*Travers de pre-
 scription alleg'
 per le Def.*

Case.

mañio de Town Barningham a toto te
poze cuius contrarii memoria homin
non existit fuerunt & here consue
p tenen^d suis custumariis predicto
messuagii gardini pomarii duaz ac
& dimid^u unius acr & dimid^u unius r
terre cum ptinen^d coiam pastur in p
dia^r pecia pasture (vocat Basingh
Common) pzo omnibus & omiōd^u abet
suis (vocat Horse-beasts and Neat-be
super eisdem messuagio gardino por
rio duabus acris & dimid^u unius a
& dimid^u unius rode terre cum per
leban^d & cuban^d quolibet anno omni t
poze anni causa Vicinagii put p^dia
superius allegabit, Et hoc parat^r
fificare unde ex quo p^dia^r E. equoz
barcaz & hobium p^dia^r posiconem
depass^t conculea^ton & consump^tion he
p^dia^r cum equis bobus & vaccis p^di
in p^dia^r pecia pasture (vocat Basing
Common) supius cogn^d idem G. p
judicium & dampna sua oclone t
illius sibi adjudicari, &c.

Rejoinder.

Et p^dia^rus E. ut prius die quod
M. & omnes ille quoz statum idem
het & p^dia^ro primo die Maii Anno q
to supradicto fuit in p^dia^r Mañio
Town Barningham a toto tempore cu
contrae memoria homin^d non existit
runt & here consueberunt p tenen^d
custumar^e p^dia^ro messuagii gardini
marii duaz acraz & dimid^u unius
& dimid^u unius rode terre cum pt
coiam pastur in p^dia^r pecia pasture

Basingham Common) p omnibus & averiis suis (vocat Horse-beasts & Neat-beasts) super eisdem messuagio & pomario duabus ac & dimid & dimid unius rode terre cum ptinen leuam & cubam quolibet anno omni tempore anni causa vicinagii *Issue.* ipe supius allegabit, Et de hoc pon super priam, Et pdia' G. silit' (Ec.) de Thomps. 63. Co. Ent. 10.

Et pdia' Iohes per R. D. Artornd suum ven & defend vim & inju. quando, (Ec.) Et quoad ponend qua averia in pdia' trescentas acras (vocat Askerwell Common) pzet quagine obes de obibus pdia' in Par. one pdia' specificat die qd ipe non inde Culpabilis, Et de hoc pon se priam & pdia' C. inde silit, Et quoad ponend pdia' quadzingene obes pdia' trescent acras terre (vocat Askerwell Common) supius fieri suppdit idem Iohes dicit qd pdia' C. actionem cum pdia' inde Hlus cum here seu manere non debet quia die qd diu ante tempus pdia' quo supponitur posicoi pdia' supius fieri idem Iohes fuisse & adhuc seie existit de & in messuagio ducent & quinquagine acris terre prati & pasture cum ptin in paroch de Askerwell pdia' in Dñico suo de feodo, Idemq; Iohes & omnes al stat idem Iohes modo her, Et ito tempore quo, Ec. habuit in tene-ntis pdia' cum pertin a tempore cu-
jus

In Case.
For surcharg-
ing a Com-
mon, the De-
fendant justi-
fies he is a
Commoner.

Case.

ius contrarii memoria hominū non
 stit habuer & usi fuer & consueber &
 buer here p se tenentibus & firmat
 suis tēti pū cum ptin coiam pastur
 quadzngent obilibus sup tēntum pū
 cum ptin leban & cuban in pūa t
 cent acris terre (vocat' Askerwell Co
 mon) quolibet Anno omni tempore an
 tanqm ad tēntū pūa cum ptin spec
 & ptinen pūcoq Johē de tēntis pū
 cum ptin sic inde seit existēd, Id
 Johes decimo quinto die Decemb
 quarto supradco posuit pūa quadz
 gent obes tunc leban & cuban sup tē
 pūa in pūa trescent acris terre
 cat Askerwell Common) ad herbam
 tunc crescē depascē utend coia
 pūa ibm put ei bene licuit, Et
 parat est verificare, Unde petit Judi
 si pūatus C. acconem suam pūand i
 sus cum here seu manutenere deb
 (Et.) Vide Hern 208. Rob. Ent. 42.
 proprietarius terre dedit licē Def.
 ponere averia, Et traveris prescripti
 1 Brownl. 250. Defendant as Executor
 fies plowing the Ground, and traverses
 Plaintiff's Prescription. *Thomps.* 65. 2
Int. 155.

Defendant justifies Digging as Servant
A. & C. 2 *Mo.* *Int.* 252.

Defendant justifies by a Grant of Free W
 ren, by the Dean and Canons of *Win*
 and confirmed by Act of Parliament. *W*
Ent. 77.

A Man may prescribe for Common, or other Profit or Easement, for himself and his Tenant. 1 *Saund.* 344.

See more in *Tit. Replevin*, and *Tit. Trespass*.

Copyholders cannot prescribe against their Lord *omnino*, nor against any other, but only in the Name of their Lord. 2 *Saund.* 326.

And if Freeholders will prescribe, they ought to shew their Estates, and prescribe in the Name of Tenant in Fee *p* *und* *Que* Estate.

A Commoner cannot prescribe to exclude his Lord. 1 *Vent.* 394.

In a Title of Common for Beasts levant and couchant, the Levancy and Couchancy is not averrable, *Idem* 385. Nor material among Commoners, 397.

Note, That generally in all Cases where a Man hath ancient Common of Pasture by Custom or Prescription, and any other do by Inclosure, Surcharge, Trespass of his Cattle, or the like, eat up, destroy, or spoil, the Grass so much that there is not sufficient left for the Feeding of his Cattle as formerly, so that he cannot have the Profit of it as he had, he may have an Action upon the Case; but not for a small Trespass, where there is notwithstanding sufficient of Feeding left. 4 *Co.* 39. 79. 1 *Cro.* 355. 1 *Inst.* 56.

So if he have Estovers in the Wood of another by Prescription, and the Owner cut down, and leaves not sufficient Estovers. *Co.* 112.

Note, If one Commoner surcharge the Common, that the rest cannot have theirs

Case.

as they have been used to have it ; some hold that the rest of the Commoners may bring this Action against him. *Stiles Rep.* 164. *Noys Rep.* 30.

The Variety of these Sort of Pleadings Common, Custom, and Prescription, will be further explained in the Titles of *Replevin* and *Trespass*.

Negligence, &c.

*Pro negligē
custod' ignis.*

Bar.

*Qd' extraneus
ignotus ignem
imposuit domi-
bus adjacen-
tibus Quer'
& travers'
negligen' cu-
stod' ignis.*

Traverse.

¶ *Actio non (Ec.)* Quia die qd' p'dicta die (Ec.) supervenit quidam extraneus ignotus & ignem quibusdam domibus ipsius def' in p'dicta villa de p'dictis domibus p'dicti quer' contigue adjacentem imposuit sicq; eedem domus combusta fuer' ad ignes ill' ab inde p' ventum flammam versus p'dictas domus p'dicta quae suppositae & super easdem domus descendentes domos illas p' infortunium combusser' Abq; hoc qd' idem def' ignem suum tam negligentem custodivit qd' p' defectum debite custodi' ignis p'dicta' def' p'dicta' domus p'dicta quer' combustae fuerunt putat p'dicta quer' prius versus eum queritur Et hoc pariter est verificare Unde per judicium si p'dicta quer' actionem suam p'dicta inde debet eum here debeat, (Ec.)

Vide 1 Bro. Ent. 29.

*Qd' bona non
fuer' combusta
in defectu cu-
stod' ignis.*

¶ *Actio p'dicta D. p (Ec.)* Attor' suus venit, (Ec.) Et die qd' bona & tallia p'dicta ac domus p'dicta non combustae fuerunt nec aliqua inde parce combusta fuit in defectu debite custodi' ignis

mis ipsius D. modo & forma put pres
que p h2e & Parr sua pdia' suppon
de hoc, (Ec.)
Vide Rast. Ent. 8.

Aliter.

Quando (Ec.) Et dic qd ipse ignem suum pdia' salvo & secure custodivit
hoc qd ipse ignem illum tam neg-
genter & improvide custodivit qd in
debita custodie ignis illius pdia'
messuagia pdia' D. combusta fue-
runt put pdia' D. p h2e & Parr sua pre-
supius suppon Et hoc parat est ve-
rare, Ec.

Bar que il
gard de fue,
Ec.

Et pdia' D. dic qd pdia' C. ignem
tam negligent & improvide custo-
dit qd in defectu debite custodie ignis
messuagia pdia' D. combusta fuerunt
put ipse p h2e & Parr
pdia' supius suppon Et hoc petit qd
miratur p priam, (Ec.)

Repl.
Issue sur negli-
gent' garder
del fue.

Vide Rast. Ent. 8. Hern 176. 206. Ast. 13, 56.
Det' non combusser molendina modo
prima. Rob. Ent. 65.

It's said, That if a sudden Fire hap-
pen by Accident in another House near to
mine, whereby my House is burnt also, I can-
not have an Action for this; but if it be by
Negligence of him, his Wife, Servant,
Child, or Hostler, I may.

And if the Fire be by one that comes into his
House or Hostery by his Leave or Know-
ledge: But if any one come against his Will,

Case.

or unknown to him, by whose Means
House is burnt, and thereby my House
I may not have this Action against him
42 Aff. p. 8. Action, &c. 43. 2 H. 4.
Action 25. 31 H. 3. 6. and especially if it
not done wilfully.

So if a Man shoot at a Fowl standing in
own House, and thereby fire his own House
and mine also near to it, I may have
Action against him. 1 Cro. 10.

☞ Vide more in Tit. Waste.

Bar per Inn-keeper.

Bar.

Protestando qd'
bona non fuer'
posit' in hospi-
tio.

Action non) Quia protestando
nulla humod bona & catalla
posit' sive hospitale in hospitio ipsius
put p h2d & Pare p dia' supius sup
tur p plito dicit qd bona & catalla
hospitio ipsius C. non fuer p mal
tores p dia' capta & asportat put p
S. p h2d & Pare sua p dia' super
supponitur, Et de hoc, &c.

Vide Rast. Ent. 404. Co. Ent. 347. Aff.

Bar.

Qd' deliberavit
bogettam per
servien' Quer'.

Actio non) Quia ptestando qd
fuer Centum solidi in bogetta p
put p dia' III. supius versus eum
rabit p plito die qd post tempus
delibatonis bogette p dia' p ipsum
fieri suppoie scit (tal die & anno,
idem C. p quendam J. tunc servien
suis W. apud B. p dia' in hospitio
dia' delibabit bogettam illam pstat
put illam de eodem W. recepit
hoc qd bogetta illa cape & asportat

defend ipsius T. & servien suorum put
 dia' M. lupius & luss eum queritur Et
 hoc parat est verificare Unde petit judi-
 cio si, (Ec.)

Vide Rast. Ent. 404, 405. i Brownl. 196.

(Precludi non) Quia dic qd bogetta Repl. & Issue
 dia' cum pdia' Centum solidi cape & as-
 portat fuit p defend ipsius T. & servien
 suorum put ipse lupius versus eundem T.
 modo Queritur Et hoc petit, (Ec.)

Et pdia' H. p . . . Attoznd suu vend Bar.
 & defend vim & injur quando, Ec. Per Hostler.

Et dic qd pdia' G. accōnem suam pdia'
 de versus eum here seu manutēnere
 debet Quia ptestando qd Malefa-
 ces pdia' bursam pdcam cum trigin-
 tis libris de denar pdia' G. in pecunia
 camerae in eadem bursa content apud
 pdia' in hospitio pdia' H. inveni ho-
 spitat in defectu ipsius H. & servien

non pdia' non ceper & asportaver put
 dia' G. p h2d Pare sua pdia' superius
 versus eum supponit p pfito dic qd eo-
 dem tempore Transgr pdia' fieri suppōit
 dia' G. vend ad Mansionem pdia' H.
 pdia' P. pdia' ipsum rogans & deside-
 re ut secum in domo sua hospitari &
 morari potuisset & idem H. petitioni
 sua acquiescens ipsum G. adtunc & ibi
 statanter admittens duxit ipsum in
 quandam Cameram in eadem domo &
 habem ad servand ostiū ejusdem Cam
 salbo custodi bonoz ejusdm G. ibi
 ostiū eid G. tradidit & ipsum G. ad-
 D d tunc

Protestand.

Pur plea que il
 lodge le Plt'
 gratis & que
 les Def. ne
 teigne Com-
 mon Inn.

Case.

tunc & ibm in eadem Camera hospitatus pmisit Absqz hoc qđ idem H. fuit hospitator tenens Cod hospitium ad hospitand homines p partes illas transeuntes in forma qua pdia' G. superius versus eum queritur Et hoc, (Ec.) Unde per Iudicium si, (Ec.)

Repl.

Que le D f.
teigne Com-
mon Inn.

Et pdia' G. (Ec.) peludi non debet. Quia die qđ pdia' H. fuit hospitator tenens Cod hospitium ad hospitand homines p partes pdia' transeuntes in forma qua idem G. superius versus eum queritur Et hoc per qđ inquiratur p priam, Ec.

Vide Rast. Ent. 405. & Ast. 48. 2 M
Intr. 147.

Case envers
Hostler pur
male garder
Chival, Ec.
Def. plede qđ
le Plt' request
lay a mitter
son Chival al
Pasture.

Et pdia' G. p . . . Attornd suu
ven & defend vim & injuriam qu
do, Ec. Et die qđ pdia' H. accor
suam pdcam inde versus eum here
debet quia die qđ pdia' H. pdco temp
in Parr pdia' specificat hospita fuit
hospitio ipius G. & adtunc & ibm
quisivit pdia' G. qđ idem G. pone
spadonem pdia' in aliquo Clo past
ipius G. ad herbam in eodem Clo
gen depascendi p qđ idem G. adtunc
eandm requisiconem ipius H. sic
posuit spadonem pdco in quodm
pasture ipius G. vocat, (Ec.) ad
bam in eodm depascendi & ibm depa
rand qui quidm spado in Clo illo
bam in eodm crescen fuit depascen
ibm depasturans quousqz quidm m
factores die & anno in Narracone p

prius spec' p'dict' spadonem p'dict' H. ex
 illo ceperunt & abduxerunt Absq'
 q'd spado p'dict' in hospicio p'dict' exi-
 cap' & abduct' fuit ab eodem hospi-
 in defeau ipsius G. & serbienciū suo-
 put p'dict' H. superius versus eum
 ritur Et hoc parat' est verificare unde
 iudiciū si p'dict' H. accōnem suam
 inde versus eum here debeat, &c.
 Et p'dict' H. dic' q'd ip'e p' aliqua, (&c.)
 non debet Quia dic' q'd ip'e p'dict' H.
 die Maii Anno, (&c.) supradictō
 D. p'dictam delibavit p'fat' G. spa-
 nem p'dict' in stabulo infra hospiciū
 custodiend' & pascend' q'd' quidam
 delatores tempore in Narracōne p're-
 superius spec' spadonem illum sub
 dia ipsius G. & serbien' suorum ce-
 unt & abduxerunt put ip'e superius
 ando allegavit Absq' hoc q'd idem
 requisivit ipsum. G. q'd idem G. po-
 spadonem p'dictum in aliquo Clo
 ure ipsius G. ad herbam in eodem
 depascend' put p'dict' G. superius
 gavit Et hoc parat' est verificare
 petit iudiciū & dampna sua oc-
 missa sibi adjudicari, (&c.)
 p'dict' G. ut prius dic' q'd p'dict' H. *Issue sur Re-*
 quisivit ipsum G. q'd idem G. poneret *quest.*
 nem p'dictum in aliquo Clo pasture
 G. ad herbam ipsius G. in eodem
 depascend' put ip'e superius alle-
 Et de hoc pon' se super P'iam,
 Et p'dict' H. sitit Ideo Precept' est
 q'd Venire fas' hic, (&c.)

Repl.
*Que Malefactors
 estoign son Chi-
 val hors del
 Inn en default
 del Def. & ses
 Servants, &c.*

*Issue sur Re-
 quest.*

de Hern. 250. Rob. Ent. —

Case.

Note, As to maintaining an Action against an Inn-keeper for losing of Goods, &c.

It must be a common Inn; also an Inn in London is so taken, *Popb.* 178.

He to be charged must be a common Inn-keeper: And if he be but newly up his Trade, he is chargeable, 8 Co. *Dyer* 158, 266.

The Plaintiff must make it appear Goods were brought into the Inn or House, and by 8 Co. 31. it must be in his Passage Travel through the Country. See also *Loe* 173. But *vide Noy's Rep.* 79. and *L. Rep.* 126, 127. 'tis good enough to say he there only.

The Goods must be the Goods of a Guest, or of his Master, and either of them may have his Action, *Popb.* 179. *Bendl.* and some say, he shall be accounted a Guest but for Three Days, and not after. *Latch* 88. *Gulien's Case.*

But if he board or sojourn in an Inn, or stay a Quarter of a Year there, he will be accounted a Guest capable of this Action. *Popb.* 179. *Hertl.* 49. *Yelv.* 162. *Bendl.* *Dyer* 158. *Latch* 126, 127.

The Inn-keeper is not obliged to keep Things out of his Inn or House: Therefore if the Guest bid him put his Horse to Grass, and he be lost, the Guest must bear it; but if he put him out on his own Head, he shall bear the Loss, 8 Co. 32.

It must be lost by Negligence, and in the fault of the Host or his Servants; it is therefore to be shew'd that the Goods came into his Hands. *Idem,*

The Goods, it's said, must be lost while the owner is there; for if one leave his dead goods with the Inn-keeper, and do not lie there himself, and the Goods are stolen, the Host shall not answer for them, *Bendl.*

Yet if it be a Horse or living Thing that is, by which the Inn-keeper doth gain, he shall answer for it; and likely for dead Things, he make any special Promise, especially if the Guest go out in the Morning and come in at Night, 8 Co. 32. 1 *Brownl.* 254. *Co.* 189. *Noy* 126. *Latch* 127.

Yet see a Precedent in *Coke's Entries*, p. 345. which sets forth, That he is to keep all the goods that are left with him, ita qd dampnū eveniat hospitibus nec aliquibus, &c.

If an Inn-keeper refuse to lodge a Traveller, or herbage his Horse, he may have an Action, unless he have good Reason, as that his house is full, or that the Traveller had the plague, or the like, and a Constable of the town may compel him, 5 *Ed.* 4. 2. 14 *H.* 7. *Kelw.* 50, 158.

But 'tis otherwise, if the Traveller refuse to lodge there himself, *Pasch.* 7 *Jac.* B. R. *Walbrook's* Case; Or after Refusal says, he will make a shift amongst them, and comes in, and so is bound, (unless the Cause of the Refusal was such) *Dy.* 158. So if he come in and lodge with some of the Guests, without Leave of the Host, or any of his Servants.

Case.

Note, As to maintaining an Action against an Inn-keeper for losing of Goods, &c.

It must be a common Inn; also an Inn in London is so taken, *Poph.* 178.

He to be charged must be a common Host or Inn-keeper: And if he be but newly up his Trade, he is chargeable, 8 Co. *Dyer* 158, 266.

The Plaintiff must make it appear Goods were brought into the Inn or House, and by 8 Co. 31. it must be in his Passage and Travel through the Country. See also *Bentl.* 173. But *vide Noy's Rep.* 79. and *Latch Rep.* 126, 127. 'tis good enough to say he was there only.

The Goods must be the Goods of a Guest, or of his Master, and either of them may have his Action, *Poph.* 179. *Bendl.* 173. and some say, he shall be accounted a Guest but for Three Days, and not after. *Latch* 88. *Gulien's Case.*

But if he board or sojourn in an Inn or stay a Quarter of a Year there, he will be accounted a Guest capable of this Action. *Poph.* 179. *Hetl.* 49. *Yelv.* 162. *Bendl.* 173. *Dyer* 158. *Latch* 126, 127.

The Inn-keeper is not obliged to keep Things out of his Inn or House: Therefore if the Guest bid him put his Horse to Grass, and he be lost, the Guest must bear it; but if he put him out on his own Head, he shall bear the Loss, 8 Co. 32.

It must be lost by Negligence, and in the fault of the Host or his Servants; it must therefore be shew'd that the Goods came to their Hands. *Idem,*

The Go
Owner is
Goods, wi
here him
the Host

73:
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the Guest
again at
Cro. 18

Yet see
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But
lie ther
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robb'd
false)
with s
Host,

The Goods, it's said, must be lost while the Owner is there; for if one leave his dead Goods, with the Inn-keeper, and do not lie there himself, and the Goods are stolen, the Host shall not answer for them, *Bendl.*

Case.

Yet if it be a Horse or living Thing that is lost, by which the Inn-keeper doth gain, he shall answer for it; and likely for dead Things, if he make any special Promise, especially if the Guest go out in the Morning and come again at Night, 8 Co. 32. 1 *Brownl.* 254. Cro. 189. *Noy* 126. *Latch* 127.

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If an Inn-keeper refuse to lodge a Traveller, or herbage his Horse, he may have an Action, unless he have good Reason, as that his House is full, or that the Traveller had the Plague, or the like, and a Constable of the Town may compel him, 5 *Ed.* 4. 2. 14 *H.* 7. 12. *Kelw.* 50, 158.

But 'tis otherwise, if the Traveller refuse to lie there himself, *Pasch.* 7 *Jac.* B. R. *Walbrook's* Case; Or after Refusal says, he will make a Shift amongst them, and comes in, and so is robb'd, (unless the Cause of the Refusal was false) *Dy.* 158. So if he come in and lodge with some of the Guests, without Leave of the Host, or any of his Servants.

Case.

If the Inn-keeper bids the Guest at coming put his Goods in such a Place under Lock, and he will warrant them, otherwise not, and the Guest suffer them to lie in an outer Court, and there they be lost, the Inn-keeper shall be excused, *Dyer* 266.

That the Inn-keeper, when the Guest came to the House, was sick, and by Occasion thereof of *de non sane memory*, 1 *Cro.* 622.

But it will be no Excuse for him to say, That his Guest did not acquaint him with his Goods what they were, 42 *Ed.* 3. 11. Nor, that he delivered the Key of the Chamber to the Guest himself; or that he knew not the Burglars, 22 *H. 6.* 38. a.

Yet, 8 *Co.* 33. he shall not be accountable for any Wrong done to the Person of the Guest. In this Action the Writ is general, but the Count is special, 8 *Co.* 33. *Stiles* Rep. 370.

Def plede que il esteant un commonCarrier fuit robb del Cloth en le Count al son Inn, Et traverse son Promise a Carrier le Cloth safe-ment, &c.

ff. **E** t p dicit Ricus per — Attor suum die qd (Acto non) Qu die qd ipe est t p dicit (tli die t anno supradicto fuit Cois Tabellarius (vocat a Carrier) p quibuscunq rebus alicuius persone a W. p dicit usq Civitatem p dicit carriand qd p dicit R. die t anno supradictis apud W. p dicit requisivit ip Ricum ad carriand pannum p dicit usq ad p dicit Civitatem London virtutis cuius requisiconis idem Ricus pannum illud usq Civitatem p dicit carriand infra tempus p dicit p fcat C. S. ad usum p dicit R. ibm deliberand ut Cois Tabellarius [vocat a Carrier] de p fcat R. apud

W. p dicit
Carre
res ut
cund u
rier] ce
cum h
ibm on
t anno
cujusd
cum C
p dicit
a W. p
dia' m
intrav
nos in
eadem
ipius
Absq
fit ad
secure
tatem
C. S.
p dicit
parr
Et ho
(Et.)
(Et.)
Vid
parr
man
Cista
fuit a
bers
stos.
Bro. R
bona

W. p̄dcam̄ recepit & eundem pannū in
 Carecta ipsius Ricd̄ int̄ alios pannos &
 res usq; Civitatem p̄dcam̄ p̄ ipsum Ri-
 cū ut Cōis Tabellarius [vocat a Car-
 rier] carianū posuit & carectam illam
 cum humod̄ pannis & rebus adtunc &
 ibm̄ oñavit Ac qđ quidam C. D. (tū die
 & anno) apud H. in Com̄ Hunc domū
 cuiusdam J. G. in qua idem Ricus
 cum Carecta sua cum pannis & rebus
 p̄dictis in forma p̄dicta' oñat̄ in itin̄e suo
 a W. p̄dicta' usq; Civitatem London̄ p̄-
 dicta' moram fecit & hospitavit fregit &
 intravit Et pannū p̄dicta' int̄ alios pan-
 nos in carecta sua p̄dicta' sic oñat̄ & in
 eadem domo existēd̄ contra voluntatem
 ipsius Ricd̄ felonice cepit & asportavit
 Absq; hoc qđ ip̄e p̄misit & sup̄ se assump-
 sit ad carianū pannum illum salvo &
 secure a Villa de W. p̄dcam̄ usq; Civi-
 tatem London̄ & ibm̄ pannū illū p̄fecta'
 C. S. ad usum p̄dicta' P. infra tempus
 p̄dicta' delibandū put̄ p̄dicta' P. p̄ h̄e &
 Narracōnem sua p̄dicta' sup̄ius suppon̄
 Et hoc; (Ec.) Unde petit iudiciū (si accō,
 Ec.) Et Quer̄ manutinet h̄e Ideo xii.
 (Ec.)

Vide Rob. Entr. 30. Bro. Red. 16. Al
 Barr̄ de bonis p̄dicta' p̄ Common Water-
 man Bar quod Cimba cum bonis in
 Cista per magnam tempestat̄ submersa
 fuit absq; aliqua negligēc̄ Def. & tra-
 vers̄ qđ amiss̄. fuer̄ p̄o defcū salve cu-
 stodi. Cl. Ass. 99. 2 Mod. Intr. 95. vid. 3. 38.
 Bro. Red. 101. Protest. &c. p̄o plito quod
 bona combust̄ fuer̄ in hospicio super bi-

Case.

am permissione divina & non per negligentem Demure inde spial. Winch. Ent. 29.

Common Carrier.

THE Plaintiff declares in an Action upon the Case, That whereas the Defendant was a Common Bargeman, and used to carry for Hire from *London* to *Milton*, and other places in *Kent*, that he delivered unto him a Portmantil and 30*l.* therein to carry, and gave unto him Two Pence for the Carriage, and that the Defendant tñ negligenter custodivit that he lost it. The Defendant confessing the Receipt pleads, That he was a Common Bargeman, but fearing to carry it, delivered it to *J. D.* to carry, and that he gave Notice thereof to the Plaintiff, and he agreed thereto, and discharged him of the Carriage. The Plaintiff traverses that he did not discharge him: Defendant demurs, and adjudged for the Plaintiff; for the Delivery by his Assent is not material, but the only Matter traversable is the Discharge, which is issuable. Afterwards an Error being brought, it was assigned, That this Action lies not against a Common Bargeman without Special Promise. But all the Justices and Barons held, That it as well lies as against a Common Carrier upon the Land, and also that the Traverse was good, and Judgment was affirmed. *Vide* 2 *Cro.* 330. *Rich* and *Kneeland*.

And Note, that it is held, That if a Carrier take my Goods to carry and wilfully mar them, or negligently lose them, or suffer them to be lost or spoil'd, I may have an Action

Action on the Case against him, *Hob.* 106.
Noy's Rep. 114.

Case.

As if he breaks or spoils my Pots, Glasses,
2 H. 7. 2. 11. Lib. Intr. D. 2.

So if he overloadeth a Horse, and it fall in-
to the Water, or drives by Night, or out of
the Way, and is robb'd.

And tho' the Goods be delivered to his Ser-
vant; yet if it be his common and known
Servant, and one that taketh in Goods for him
to carry, the Master will be chargeable, *Pasch.*
fac. Wornhall and Bradshaw.

Quæ quer non delibabit Def. Cistam
rum denar. Rast. Ent. 9.

And tho' he be a Carrier that is newly set
up, or he carry for some Persons only, (if he
carry for Money) 'tis actionable.

But a Carrier by a Special Agreement, as
when he undertakes the Carriage with this
Caution, Not to answer them if they be lost;
he shall not be chargeable.

So if there be no Default in him in the Car-
riage, and the Damage happen by the Act of
God, unless he has made a Special Promise,
and there is a good Consideration to engage
him in the Case, it seems he is not to be char-
ged, *Doct. & Stud. 38, 139. Fitzb. 14, 15.*

Also, if one that is not a Common Carrier
undertake the Carriage of any Thing, and has
no Wages promised him for it, this it's said is
but *nudum pactum*, and not actionable, *3 H. 6. 36.*
Reg. 110.

Again, as to a Ferry-man, if he undertake
to carry me over the Water, and doth it not,
I may have this Action, and that without any
Consideration; for his Pay is certain, *22 Aff. 41.*
And

Case.

And so it now seems of Carriers, for their Price and Pay generally is settled.

If a Ferry-man undertake to carry any Thing for me over the Water, and by his Default it taketh Hurt, or is spoil'd in or after the Carriage, while in his Custody; I may have this Action against him.

This Action also lieth against a Ferry-man that surchargeth his Boat, by which my Horse is drown'd, 22 *Aff.* 41. But if the Danger accrue only by the Act of God, as by Tempest or the like, without any Default of the Ferryman, no Action will lie for this, 12 *Co.* 63.

*Non Rasit
barbam.*

¶ **E**t p̄dica' D. per — Attornd sum ven & defendi vim & injur quādo, (Et.) Et dic qđ ipse non rasit barbam ipsius G. cum novacula immunda & insalubri modo & forma quibus idem G. p̄ h̄e & Parr sua p̄dica' superius vendit eum queritur Et de hoc pon se per priam Et p̄dica' G. sili, (Et.) Et. Vide Rast. Ent. 2.

Note, That if a Barber shave one with an unwholsome Razor, so that his Face is thereby hurt; or if he cut his Face with the Razor, the Party may have his Action on this Case, F. N. B. 94. 7 H. 6. 5. *Old Book of Entries* 2.

*Ad accon' pro-
lat' per Chirur'
pro curacon'
fractur' &
vulneris.*

¶ **A**ccōd non, (Et.) Quia dic qđ vendit & verum est qđ p̄dica' D. curat fractur' & vulneris p̄d' super se assumptis sit put idem D. in Parr sua p̄dica' superius suppon sed idem E. ulterius d

qđ pdia' P. a pdia' die, (Ec.) usq; p̄-
 dtum diem, (Ec.) curam fracturę & vul-
 neris pdia' tam negligencę & inartifi-
 cialit attendit & tractavit qđ fracturę &
 vulnus pdia' ob negligencę ipsius P. in
 ea pte hitam & p inartificioſam admini-
 ſtracōem medicamentū emplastrū & phar-
 mac ad fractōem & vulnus pdia' multi-
 plicat infestū devenit & pdia' P. die,
 (Ec.) fracturę & vulnus pdia' non cura-
 vit rōne cuius postea scilicet pdia' die
 (Ec.) apud P. pdia' quedam comunicā-
 tio hita & mota fuisset inter ipsoſ P. &
 E. de & concernendū curaōem fracturę &
 vulneris pdia' Et super communicacōem
 illę pdia' P. eidem E. adtunc & ibm as-
 ſeruit & dixit qđ ipse idem P. aliquod
 amplius erga curaōem fracturę & vulneris
 pdia' qđ ipse idem P. antea fecisset non
 faceret Et qđ pdia' E. ad al Chirurgū
 p curaōem fracturę & vulneris pdia' ad-
 eſſet super quo idem E. quinquagint sol-
 lidū legis monete Ange eidem P. tam p
 arte & labore ſuis in ea pte hit qđ pro
 adminiſtracōe medicē emplastrū & pharmac
 & al humodū neceſſari ad fracturę & vulnus
 pdia' adtunc & ibm ſolvit quos quidam
 quinquagint ſolidū idem P. de pſae E.
 adtunc & ibm acceptavit Abſq; hoc qđ
 pdia' P. p arte labore & curaōem fracturę
 & vulneris pdia' ult qđ pdia' quinquā-
 gine ſolidū rōnabiliter meruit Et hoc, (Ec.)
 Vide Bro. Red. 92.

Case.

Bar.

*Qđ Quer' neg-
 lexit curam &
 dixit qđ non
 faceret ulterius
 quam fecisset.
 Et qđ Def.
 ſolvit 50 s.
 erga curaōem
 quos Quer' ac-
 ceptavit Abſq;
 hoc qđ Quer'
 meruit ultra.*

*Traverse ul-
 tra.*

Note,

Case.

Note, That if a Physician or Chirurgion undertake a Cure, and neglect it, or apply contrary Medicines by himself or Servants, an Action of the Case will lie against him, *Reg. Orig.* 105. 19 *H.* 6. 49. *Plow.* 305. 2 *Bulst.* 333.

Versus Def.
quia tam enormiter equitavit Equum quer' qd' interit.

Bar.
Qd' Equus fuit in variis infirmitatib' temp' liberationis, & travers' quod enormiter equitavit.

Repl.
Qd' Def. enormiter equitavit & exivit superinde.

Accó non, Quia dic qd' Equus p'dict' tempore liberaconis illius fuit in variis infirmitatibus videlt Glandyis & collapsus unde ad laborand' impotens extitit p' quod idem Equus occacone infirmitatum illar' interit Absq' hoc qd' idem A. Equum p'dict' tam celeriter & enormiter equitabit qd' Equus ill' occacone equitacionis illius interit Et hoc paratus est verificare unde petit iudicium si p'dict' C. accconem suam p'dict' versus eum habere debeat, &c.

Et p'dict' C. dic qd' ipse p' aliqua palle gat ab acccone sua p'dicta hend' pelud non debet quia dic qd' p'dict' A. Equum p'dictum tam celeriter & enormiter equitabit quod Equus ille interit p' quod idem C. superius versus eum queritur Et hoc petit qd' inquiretur p' priam & p'dictus A. filie Jo p'cept est Dic qd' venire fac' hic in Octab' Purificacon' Beate Marie Virginis xii, &c. p' quos, &c. Et qui nec, &c. Ad recogn', &c. Quid' t'm, &c. Vide 1 Bro. 40. Rob. Ent. 5. Hern. 101.

Note, That if one for hire borrows my Horse to ride to London, and he rides him further

or rides him out of the Way, or forwards and backwards, and forwards again in and upon the right Way, in all these Cafes I may have an Action againft him, efpecially if the Horfe be hurt thereby; fo if the Borrower ride him an exceffive Pace, fo as to hurt him, although he hath ridden him no further than was agreed, but not if he makes him weary only, 12 Ed.4. 813. 8 Co. 146. Doct. & Stud. 128, 129.

So if he put my Horfe borrowed into an old rotten Houfe, and the Houfe fall down and kill him, or if he neglect to take Care of him, or fuffer him to be abused, I may have an Action; but otherwife if he die fuddenly, and without his Default, 1 Brownl. pag. 8, 9, 17. 1 Cro. 14. 4 Ed. 3. 36.

Actio non, &c. Quia dic qđ ipſe he-
ne & competenter ferrabit Equum
pđictum Abſq; hoc qđ ipſe fixit clavu
in unum pedem Equi pđicti put pđicti
Quer ſupius Uſus cum queritur Et hoc
parat eſt verificare Unde, (&c.)

Et pđicti Quer dic qđ ipſe p aliqua p
pđicti Def. ſupius pſitando allegat (pre-
cludi non) quia dic qđ pđicti Def. fixit
clavum in unum pedem Equi pđicti in
forma qua idem Quer ſupius verſus
eum queritur Et de hoc poſſe ſe ſuper
priam Et pđicti Def. ſitit Iſo pcept eſt
Dic quod Venire fac hic in Octab Pu-
rificationis Beate Marie Virginis xii,
&c. per quos, &c. Et qui nec, &c. Ad
recogn, &c. Quia tam, &c.

Ad Actionem
verſus ferro-
rem, &c.

Bar.

2d' def. compe-
tenter ferravit
Equum & tra-
vers' fixacon'
clavi.

Repl'.

2d' def. fixit
clavum in pe-
dem Equi. Et
exit' ſuperinde.

Vide

Case.

Vide 1 Bro. 31. Quod servabit Equum
quer bene & competenter Et traverse
negligenc. Rast. Ent. 3.

Note, That if a Farrier undertake the Cure
of my Horse, or a Smith the Shooing of my
Horse, and doth it not well, an Action on
the Case will lie against him, *Bro. Action* 24.
19 H. 6. 47.

As if he cly my Horse in the Shooing of
him, so that I lose the Use of him, or my Ser-
vant is hindred in riding about my Business
and this, though there be no Agreement, War-
ranty or Wages promised or given, and 'tis all
one whether the Horse was brought by my
self or Servant, 46 *Edw.* 3. 19. *Action*, &c.
35. *Fitz.* 94. *Reg. Orig.* 106. A. 2 *Bulstr.*
334.

Also if he refuse to shoe my Horse, and has
Necessaries, and I tender his Payment, an
Action lies, 14 H. 6. 18.

Traverse
Negligence
in Planting.

Actio non, Quia dicit qđ ipse plantas
pdiat in fossato pdiat bene & suffi-
cienter posuit & plantavit Absq; hoc qđ
ipse plantas pdiat tam negligenter &
improbide posuit & plantavit qđ plante
ille corrupte & mortue debener put pdiat
D. p Breve & Parc sua pdiat superius
suppon Et hoc paratus est verificare
Unde petit iudicium si, (&c.)

Repl.

Precludi non, Quia dicit qđ pdiat A.
plantas pdiat in fossato pdiat tam neg-
ligenter & improbide posuit & planta-
vit qđ plante pdiat corrupte & mortue
debener

ebener put idem H. per Breve & Parr
 na p̄dia' superius suppon Et hoc petit
 inquiratur per Patriam, (Ec.) Vide
 Bro. 73. Rast. Ent. 13.

Note, An Action of the Case lieth against
 my Workman that being retain'd to do my
 Work, dorth it amiss.

Or against my Servant that refuseth or
 mitteth to do the Work of his Place, where-
 I have Damage; as,

Against a { Bailiff,
 Butler,
 Plowman,
 Shepherd,

and the like, too many here to enumerate.

Vide 2 H. 7. 11. 3 H. 6. 36. B. 5 Co. 13, 14.
 8 Edw. 4. 29, 27. Bro. 99. 1 Cro. 777, 784.
 Orig. 101.

Rescue and Escape.

ET p̄dia' C. p M. C. Attorn suum *Sur Escape.*
 ben & defend vim & injur quan-
 Et. Et dic quod p̄dia' S. acconem
 am p̄dia' versus eum here non debet
 ia protestando qđ p̄dia' Breve dia'
 ad Regis de Capias ad computand
 us p̄dia' R. p p̄fat P. non fuit pro-
 cur nec eidem C. delibatum put p̄dia'
 superius allegabit p plito idem C.
 qđ ip̄e non cepit & arrestabit p̄dia'
 put p̄dia' P. superius filiter allega-
 Et de hoc pon se super priam Et
 dia' P. filit, Ec. Nō precept est Dic
 Venire fac hic a die Pasche in quin-
 que

Case.

que septianas duodecim, &c. per quos
(&c.) Et qui nec, (&c.) Ad recognoscendum,
Quia tam, (&c.)

Vide Ast. 14. Non promittit ire ad largum
Vide 5 Co. 89. Cl. Ass. 83.

As to the Action for an Escape and Rescue it is to be known, that when a Man is taken upon a mean Process, as *Latitat* or *Capias*, and another Man rescue him, an Action of the Case lies against the Rescuer for Damages; but it's said not against Sheriff, because the Sheriff may plead Rescue, and that he made a Return of Rescuers; so that the Plaintiff may have Action against them.

But if it were after Execution, or upon *Capias* *Attlagatum*, he that made the arrest and suffered the Escape is liable, and may have his Counter-Remedy against Rescuers.

And if the Sheriff upon Arrest shall bring his Prisoner into Gaol, and thence suffer him to escape, an Action on the Case will lie against him, See 1 Cro. 33, 77. 2 Cro. 289, 360, 4 Poph. 189. 3 Bul. 198. Dyer 212, 241.

See after concerning the Pleadings.

And Note, That if any Sheriff or other Officer of any Court that is employed to do any Thing for another, shall do it deceitfully and falsely to his Special Damage, he may have an Action on the Case, *F. N. B.* 95. 6 Co. 1 Cro. 175. Dyer 355. 9 Co. 32.

Case.

Et p̄dix' f. p — Attorñ suum ven
t defend vim & injur quando, &c.
& die qđ p̄dix' m. accōn suam p̄dix'
inde versus eum here seu manutenere
non debet quia protestando qđ p̄fat t.
non indebitat fuisse eidm m. in p̄dix'
ocagine Libris in Parr p̄dix' superius
mencōnat nec aliqua inde p̄cele put p̄
p. p Parr ille superius suppon p̄ plito
idem f. die qđ bene & verū est qđ p̄dix'
m. prosecue fuisse extra Cur dec Dñd
Regis scdm consuetud ejusdm Cur p̄
Breve dec Dñd Regis de alias Capias
versus p̄dix' t. eidm f. direct' quodq
Breve illud p̄cept fuit eidm f. qđ ca
pet p̄dix' t. si, &c. Et eum salvo, &c.
Ita qđ heret corpus ejus coram deo
Dño Rege apud Westm p̄dix' die Lune
p̄or' post Crim Ascencōnis Dñd ad re
spondend p̄fat m. de plito Cūlge p̄dix'
qđ p̄dix' m. Breve il p̄fat f. in forma
juris exequend deliberavit qđq idem f.
virtute Brevis p̄dix' cepit & arrestabit
p̄dix' t. & ipm in custodi sua ad secam
p̄fat m. habuit & detinuit quousq idem
postea & ante retorn ejusdm Brevis
& ante evasion p̄dix' in Parr p̄dix' su
perius fieri suppōit scist decimo die
Aprilis Anno Regni dec Dñd Regis
nunc septimo apud N. in Com Nott' re
cepit quoddm Breve dec Dñd Regis de
habendo Corpus ejus cujus tenor sequi
tur in hec verba Willus tertius Dei
Gra Angl Scoe Franc & Hibnie Rer
e dei Defensoz, &c. Die Nott' saltm

Sar Case
against a She-
riff for an Es-
cape. The De-
fendant
pleads, That
the Justices of
the Peace in
their Quarter
Sessions made
a Habeas Cor-
pus to bring
the Party ar-
rested before
them, and that
being return-
ed, the said
Justices dis-
charged him.

Case.

Ostendit est Nobis ex parte T. C. qd cum
 ipse & quilibet ligeus nre in veniendū ver-
 sus aliquē Cur nre ad aliquod plitū vel
 Breve psequendū vel defendē ibi morandū
 & exinde versus negotia sua ppriā rede-
 unt sub proteccōne nra esse debeant &
 consuever juxta Libertatē & Privilegiū Cur
 p̄dictā a tempore quo non extat memoria
 usitatē & approbat in eisdem quidam ta-
 men malevoli machinandū ipm T. multi-
 pliciter p̄gravare eundm T. ut fuit in ve-
 niendo versus Cur nram coram Custodē
 Pacis nris ac Justiciis nris ad diversos
 Felon tñlgr & al malefacta in Com tu
 ad Genal Sessionē Pacis nre apud P.
 in Com tuo tenendū hoc instante die per-
 petrat audiendū & terminandū assign tñ
 p nob qm p seipō ad psequendū versus
 J. H. & al p diversos tñlgr & offensos pe-
 ipos contra nos comissos & ppetrat parti-
 vel Ministros vros arrestari & in P.
 sona nra sub custodē v̄ra detineri p̄cura-
 ver minus juste in ipius T. dampnum
 non modicū & gravamen ac contra li-
 bertatē & privilegiū p̄dictā unde nob suppli-
 cavit idem T. sibi remediū in hac parte
 adhiberi Nos igitur volendū eidm T. fieri
 qd est justū & consentaneū rōni & libe-
 tatē & privilegiū p̄dictā inviolabiliter obser-
 ri tibi p̄cipimus qd si p̄dictā T. in P.
 na nra sub Custodē tua detentē existit in
 ipm T. quocunqz nōie censeatur in e-
 dm unacum die & causa capcōnis & de-
 tencōnis suaz heas coram p̄fat Custodē
 Pacis nre & Justiciis p̄dictā apud P. p̄-
 dictā hoc instante die ut iidm Custodē P.

cis nre ac Justie pdia' visa causa pd
facere valeant in hac parte quod de
Jure & scdm Legem & Consuetud Reg-
ni nre Angl ac Libertat & Privileg pd
fuit faciend Et teas ibi hoc Breve
C. R. G. Wil apud N. pdia' decimo die
Aprilis Anno Regni nre septimo cujus
quidm Brevis de hendo Corpus ptextu
idm f. (adtunc Die Com Port' existend)
pdia' C. unacum tenore pdia' Brevis
de als Capias coram Custod Pacis
Dni Regis & Justie pdia' in Brevi
illo noiat' ad diem & locum pd' in eodm
Brevi content' & specificat' tulit & ha-
buit qdqz iidem Custod Pacis Dni Re-
gis & Justie pdia' in Brevi de haben-
do Corpus pdia' noiat' visa causa pdia'
captōnis & detencōnis pdia' C. in forma
pred ipsu pred C. postea & ante evasione
pdia' in Parte pdia' supius fieri suppōit
scit pdia' decimo die Aprilis Anno
septimo supradco apud N. in deo Com
Port' extra Custod ipsius f. adtunc Die
Com Port' pdia' existend exonerari & de-
libari fecer ita qd idem f. Corpus pred
C. coram Dno Rege ad diem & locum
pred in pred Brevi de als Capias con-
tent' parat' habere non potuit que qui-
dem exōnacō & delibacō pred C. extra
Custod ipsius f. in forma & ex causa pd
sunt eadem evasio unde pred W. supius
se modo queritur Absqz hoc qd idem f.
est tulpabilis de aliqua evasione pdia'
apud London pdia' in Parochia &
Warda pdia' seu alibi extra N. pdia'
modo & forma put pdia' III. superius

Case.

inde se modo queritur vel alibi alie seu aliquo modo qualicumque quod put idem ff. superius inde plitando allegavit Et hoc, (Ec.) Unde, (Ec.)

Def. plitat rescous in ducendo prisonar al Gaol bon plea et si Rescous non est retorid. 3 Lev. 44. Marshall pleads fresh pursuit to an Action for an Escape. 2 Mod. Intr. 145. Sheriff pleads Stat. Hen. 6. concerning Sheriffs taking Bail. Id. 151, 188, 190. Bro. Red. 96. Et Nepl qd Manucaptors non fuer sufficien in Comitatu. Vide Rob. Entr. 309. Et vide 4 Part Inst. Cleric. Bar in Debt sur obl Dic & al Officiar.

Rescue.

Note, That in an Action upon the Case for an Escape brought against the Sheriff of London and Middlesex, they plead that they had taken the Party upon a Latitat, and that in bringing him towards the Gaol, Rescous was made of him, and so return'd the Rescous as the same was, and it was adjudged a good Return, and so a good Plea here; and Judgment was given against the Plaintiff, 3 Bul. 198, 199. Mary Proby and Lumley. * For the Arrest being upon Mean Process, and not upon Execution, the Sheriff is not bound to take the Posse Comitatus with him. But if the Prisoner had been once in the Gaol, the Sheriff ought then at his Peril to keep him safe, and a Rescous from thence is no Excuse for him, neither is such a Return good after Judgment; but here he may renew his Writ, and also have an Action upon the Case against the Rescouffors.

* Note, This was otherwise adjudged in the Case of Waldo and Lambert, H. 44 Eliz. B. R. 1 Cro. 268.

In an Action on the Case on Escape upon Mean Process, Defendant pleads a *Rescous* ever since 6 Car. 1. *Per Cur*, if it be returned 'tis a good Plea, and it need not be averred in the Plea that it was returned; but in Debt on Escape 'tis no Plea, 3 Keb. 513. *Hill and Mountague.*

In Cro. Car. 240, 255. *Robinson and Cleyton*, upon a *Scire fac* to have Execution of a Judgment in Debt: Defendant pleads, That at another Time the Plaintiff had sued Execution by *Capias ad satisfaciendum*, and that he was taken thereupon. Plaintiff replies, that it's true, but that the Defendant presently rescued himself and escaped; the Replication was adjudged good. And there said, That as there is no Cause for the Defendant to have *Audita querela* when he escaped, and is taken again, unless it be for a voluntary Permission by the Sheriff, so there is not any Bar for the Plaintiff to have new Execution; and tho' no good Return on a *Ca Sa* that the Defendant rescued himself, nor any Plea in Debt upon Escape, yet the Party himself shall never take Advantage of his own Tortious Act; and *Scire fac* after the Year, is maintainable.

Note, The Sheriff to Actions for Escapes, General Pleas. generally either denies the Escape, and so pleads *non permisit ire ad largum*, or else confesseth the Escape, and pleads that he made fresh Pursuit, or that he escaped by Licence of the Plaintiff.

And it hath been held, That if the Sheriff retake him on fresh Pursuit before Action brought, he shall be excused; and some say,

Case.

if after the Action, 'tis good, but not after Issue joined, *Vide Cro. Jac. 657. & Winch p. 35.*

Vide 3 Rep. Ridgway's Case, altho' it be a long Time after, yet he shall be said to be in Execution again, because he shall not take Advantage of his own Wrong.

And if the Plaintiff brings his Action before the Sheriff retake him, or if the Sheriff does not make fresh Pursuit, yet in both Cases the Sheriff may retake the Prisoner and keep his Body in Custody till he agree with him, or he may have Action on the Case for his wrongful Escape: For where the Prisoner escapes of his own Wrong, and is retaken, he shall never have an *Audita Querela* against the Sheriff, but if he escapes with the Consent of the Gaoler, he cannot take him, and if he do, the Party may have *Audita Querela*, *Sed quære i Roll. Ab. 902. & Hob. 22*

And if one in Execution escape, the Sheriff may not retake him, but upon fresh Pursuit yet he may have Case against him, or Trespass, *quare Prisonam fregit*, *Cro. Jac. 657. 2 Roll. 282, 283. Poph. 41. 3 Co. Ridgway's Case, ut supra.*

The Sheriffs of London brought an Action upon the Case, for that the Defendant being in Execution under their Custody for 53 l. as sen' Spicer had escaped, Spicer not satisfied whereby they were compelled to pay the Debt: The Defendant pleads, confessing the Matter, and that after his Escape Spicer had acknowledged Satisfaction on Record: Plaintiffs demur, and adjudged clearly for the Defendant, but held that an Action on the

Def. pleads
Satisfaction
acknowledg-
ed

Case

Case lieth against a Prisoner for an Escape out of Execution, to the Intent to make the Sheriff chargeable with the Debt, *Cro. Eliz.* 237. *Salteston and Payne*, *F. N. B.* 130. 13 *H.* 7. 2. 14 *H.* 7. 1.

An Action of the Case was brought, *Trin. 44 Eliz.* in *B. R.* by *Colston* *vers.* *Rosse* and *Levet*, late Sheriffs of *York*, for that whereas according to the Custom of the City of *York* he levied a Plaint of Debt of 15*l.* against one *Leyton* before the said Sheriffs in the Court of *Guildball* according to the Custom there, and thereupon had Summons awarded, returnable at the next Court there, which was returned *nihil*, and afterwards had a *Capias* awarded, returnable at the next Court before the said *Rosse* and *Levet*. At which Court, such a Day holden, the Serjeant returned *Cepi Corpus & paratū habuit, &c.* At which Court holden before the said *Rosse* and *Levet*, then Sheriffs, the said *Leyton* was committed unto the Queens Gaol, under the Custody of the said Defendants, there to remain until he satisfied the Debt, or the Plaintiff sit inde *preclusus*, whereupon he there remained 17 *Jan.* 43. until 18 *Jan.* 43. at which Day the Defendants suffered him to go at large, the Plaintiff not being satisfied his Debt, and so went into Places unknown, whereby he was deprived of his Debt, *Unde Acto accrevit, &c.*

The Defendants plead, that they let him at large by reason of a Writ of Privilege awarded by the Council of *York*, &c. Plaintiff demurs, because they did not alledge the Authority of the Council there, &c. And it ap-

Defendants
plead Privi-
lege, &c.

Case.

pears not to the Court, that he might be privileged there, or that they had Authority to hold Plea in Debt, so as the Plaintiff might have Justice there; and therefore held that the Bar was not good, and that the Writ of Privilege not being a good Warrant, the Defendants are responsible to the Plaintiff; for at their Peril they must take heed by what Warrant they let him out of their Custody.

Then the Defendants took divers Exceptions to the Declaration: 1. Because a *Capias* is awarded returnable at the next Court, which ought not to be so, but that there ought to be a Day certain of the Return, *sed non allocatur*, for the Process at the most is but erroneous, whereof the Sheriffs shall not take Advantage, and the Plaintiff is to declare according to the Record, and cannot vary from it.

2. Because a *Capias* is awarded returnable before *Rosse* and *Levert*, which is not good, for they might be removed before the Writ returned, and therefore ought to have been returnable before the Sheriffs, without naming their proper Names, as of Process out of this Court, or *C. B.* returnable before the Justices, without their proper Names, for the Reasons before. But all the Justices said it was well enough notwithstanding, because it appears by the Record, that they were Sheriffs at the Time of the Return; so altho' a Writ awarded to the Sheriff without his proper Name is the surest Way, for the Reasons aforesaid; yet if otherwise, and he be Sheriff at the Execution and Return, 'tis well enough: So of Process returnable before the Justices by their proper Names.

3. Be.

3. Because it is not alledged, That the said *Leeson* was arrested, and so no Action can be brought for his Escape; sed non allocatur, for by the Return of *Cepi Corpus & paratum habeo*, the Arrest is to be intended: And the Record says, That he is committed *per Curiam* to Prison, which is sufficient, the Party being present in Court without an Arrest.

4. The Commitment is *in eodem remanentis quousque* the Debt be satisfied, or the Plaintiff barred, which is not a lawful Commitment, for then he should not be bailed, which is against Law, and the Course of all Courts. But the Court held it to be well enough, for that it is the Manner of Commitments in all Courts, for the Court is not to demand Bail, yet if he can find Sureties, he shall be bailed, and it is so intended in the Commitment; wherefore notwithstanding these Exceptions, it was adjudged for the Plaintiff.

Wile 1 Cro. 893. Culston versus Rosse & Levett.

Stow, an Attorney of the Common Pleas, was in Execution in *Norfolk* for 1000 *l.* and by Practice procured himself to be removed by *Habeas Corpus* before *Coke*, Chief Justice, at the Assizes in *Lent*, and then escaped to *London*, and in *Easter Term* following he was retaken by the Bailiff. The Opinion of the Court was, that the fresh Suit made was good, tho' he took him again at the End of the Year, an Enquiry was made after him, and so by consequence Action for false Imprisonment did not lie. *Mich. 8 Jac. B. C. Stow's Case.*

Defendant taken upon Pursuit at the End of the Year.

Note, If the Defendant negligently escape, Who may take him again; but if voluntarily, then only the Party may take him again.

may

Case.

may take him again, and not the Sheriff: But if the Sheriff let him go by Consent of the Plaintiff, then neither can take him. 2 Keb. 206. *Vide postea.*

Not after a
Committitur by
new Process.

Yet tho' the Party or Gaoler on negligent Escape, or the Party on wilful Escape, may take him again, yet not by a new Process of *Capias* after a *Committitur*. 2 Keb. 616.

May be taken
by the Party
after voluntary
Escape.

In 1 *Ventris Rep.* pag. 4. it is said to be adjudged in the King's-Bench, 19 Car. 2. That if a Prisoner escape by Permission of the Sheriff, yet he may be taken by the Party whose Suit he was condemned, for it may be that the Sheriff is insufficient, and it is no Reason that his own Act should dampnifie the Plaintiff. *Vide Hob.* 202.

The Escaper
dies.

If the Prisoner (upon a fresh Pursuit) dies before he is retaken, yet because it was once an Escape, an Action of Escape lies against the Gaoler. *Popb.* 186.

Defendant
must answer
the Time.

The Defendant must answer to the Escape mentioned in the Declaration as to Time, & for the Traverse *Uter vel alio modo* does not answer to the Time, but to the Manner of any Thing alledged. *Cro. Eliz.* 439. *Vide Dyer* 6 Serjeant *Minor's Case.* *Vide postea.*

Action for
voluntary
Escape.

Defendant pleads he escaped in November by Negligence, and that he freshly pursued and took him, and that afterwards, 27 August, he died, and traverses voluntary Escape. Plaintiff demurs, because before the Escape and for that the Traverse was void. *Per Curiam.* The alledging the voluntary Escape is immaterial, and the Sheriff chargeable without it, and he need not traverse the voluntary Escape, but Judgment for the Plaintiff, because the Defendant

Need not tra-
verse volun-
tary Escape.

Defendant

Defendant doth not say he died ante Exhibi-
torem Wille. • Case.

The Plaintiff declares of a voluntary E-
scape, the Defendant shews a negligent Escape,
and adjudged good without Traverse. *Latch*,

200.
On Nil debet pleaded in Escape, fresh Pur- When fresh
suit may be given in Evidence; so a Release, or Pursuit may
any Thing that destroys the Duty. 3 *Keb.* 305, be given in
3-8. *Mod. Rep.* 116. Evidence.

Other Pleadings.

AS to other Pleading on this Head; note, Debt not
that Debt for an Escape is not within within the
the Statute of Limitations. 1 *Saund. Rep.* 37, 38, Statute of Li-
1 *Siderf.* 205, 206. mitation.

Acknowledgment of Satisfaction on Re- Satisfaction
cord is a good Plea, as above. *Cro. Eliz.* 237. on Record.
Salteston and Payne.

Accord with Satisfaction, no Plea in Scire
fac' on Judgment in Escape, not pleadable af-
ter a Judgment. 3 *Keb.* 255.

In Debt on Escape against a Sheriff upon *Nul tiel Re-*
a *Capias utlagar* after Judgment, Defen- cord.
dant pleads there was no such Record of the
Debt and Damages, and held a good Plea on
Demurrer. *Hob.* 209. 1 *Brownl.* 51.

So Escape by Command of the Plaintiff, or By Command
Escape by Consent of the Plaintiff, a good of Plaintiff.
Plea. *Cro. Car.* 329. *Mod. Rep.* 19. 2 *Keb.* 567.

Payment to the Sheriff on a *fieri fac'* is Payment.
good, for he is commanded to levy the Mo-
ney. *Jones*, pag. 97.

The Defendant pleaded a Release of him Release.
who recovered to the Prisoner, being in Exe-
cution,

Case. • cution, and held no Plea, 19 H. 6. 14. *Debet in Debt on Escape.*

Serjeant
pleads he
delivered
him to the
Sheriff.

Sheriff of
London's Pri-
sons.

Time mate-
rial.

Supersedeas.

Protection.

Priviledge.

Case upon an Escape was brought against Serjeant of *London*: He pleads the Sheriff commanded him to deliver his Prisoner to him which he did, and traverses that he was guilty *Aliter vel alio modo*. The Court said, the Serjeant is an Officer of the Sheriff; and the usual Manner is to plead, That the Prisoner was in Custody of the Sheriff, and Sheriff in *London* may make their Houses their Prison as well as the Counters; and that the Bar was a Confession and Avoidance, but the Traverse ill; and that here is no Escape confessed, and therefore Not guilty should have been pleaded, and not to take Traverse. 2 Keb. 147. *Sid.* 318.

Where the Time is material, the Conclusion, that it was the same Escape, will not make it good. *Bridgm. Rep.* 7.

The Defendant pleaded a *Supersedeas* to him, but therein misrecited the Return of the *Platitat*. The Plaintiff demurred as being not the same Action, which the Court agreed. 1 Keb. 234.

In Action on Escape in Debt on Judgment Defendant pleaded, That after he was arrested he was discharged by Protection (shewed to the Plaintiff), as Servant to the Earl of *Barb* and the Plea was held naught. 1 Keb. 660.

Vide Siderfin 269. Where in an Action on the Case on mean Process, the Sheriff pleaded that a Writ of Priviledge came to him *Tess* Marquess of *Newcastle*, returnable at the Sessions, shewing that Persons by Law should be priviledged in going and returning from

Sessions. The Plea was adjudged ill for Incertainty upon a Demurrer; and upon two Motions the Court doubted, whether the Prisoner shall extend to such inferior Courts. *Vide 2 Keb. 845.*

Note, That in an Action on the Case for Demurrer. Escape and false Return, if the Sheriff demurs generally upon the Declaration, he loseth the Advantage of pleading Stat. 23 H.6. c. 10. *Saund. 154, 155.*

Note, It has been adjudged, as well on a *Scire fac* as in Debt, That to plead he was *tra voluntat*. in Execution, and *contra voluntatem* of the Sheriff escaped, is no Plea, no tho' it were by Permission. *Cro. Car. 24. 3 Keb. 305.*

Also to a *Scire fac* on Judgment in Debt, Who may Bar by voluntary Escape of the Sheriff or take him Warden is ill as to the Party-Plaintiff, and it's again. all one to him, whether Prisoner escape by the Sheriff's Negligence or voluntarily; for if he negligently escape, the Party and the Sheriff may take him again, but if voluntarily, then only the Party may take him again; but if the Sheriff let him go by Consent of the Plaintiff, then neither can take him. *2 Keb. 187. 206, 802.*

Until of late Times, the Discharge of the Gaoler was a good Discharge, and the Plaintiff should hold himself to the Gaoler for his Remedy, as in *3 Co. Ridgway's Case, 8 Co. Drury's Case.* But now the Law is taken otherwise, *vide supra, & Hob. 202.* yet not in Case of Rescous. *Vide 2 Leon. 117. 162.*

For the Issues, Evidence, and Verdicts, upon these, see *Trials per Pais*, and the *Compleat Sheriff*.

In

Case,
Sheriff's De-
puty.

In Case, the Plaintiff declares, he sued *J.* on a *Latitat*, directed to the Sheriff of D. and *J. S.* was arrested, and that the Defendant pretending to be Deputy to the Sheriff, took Bond of him, and let him at large. Defendant pleads, the Sheriff made him his Deputy to bail all Prisonersailable in the County and thereupon he took Bond of *J. S.* and delivered it to the Sheriff, &c. — The Plaintiff demurs, because he pleads his Deputation without Deed. But it was held good without Deed; for a Deputy does Things only as a Servant, and in Right of his Master and so may be without Deed. *Cro. Eliz. Clec.* and *Dennis*.

Sheriff's De-
puty.

In Rescue, The Bailiff of a Liberty arrested the Party, and delivered him to the Sheriff's Deputy, and saith not from the Sheriff and yet good; for in an Action on the Case he shall shew the Truth, as it is in *Rei veritate*. *Cro. Jac. 242.*

Note, The Deputy shall plead the General Issue as the Officer himself by the Statute 7 *Jac. Mo. p. 894. n. 1141.*

Need not tra-
verse volun-
tary Escape.

In *Ventris Rep. 1. pag. 211, & 217.* Sir *Ralph Bovy's Case*. An Action was brought upon an Escape, for that he being Sheriff of *Surrey*, voluntarily suffered *J. S.* whom he had in Execution, to escape — Defendant protested that he did not let him voluntarily escape pleads that he made fresh Pursuit, and took him again, and doth not traverse the voluntary Escape: To which it was demurred, and resolved for the Defendant; for it is impertinent for the Plaintiff to alledge it, and Ways necessary to his Action; 'tis out

Time

Time to set it forth in the Replication, 'tis like
 leaping before one come to the Stile. As if in
 Debt upon Bond the Plaintiff should declare,
 That at the Time of sealing and delivering of
 the Bond the Defendant was of full Age, and
 the Defendant should plead *Diens Age*, without
 traversing the Plaintiff's Allegation. 2 Cro. 657.
 seems to be against it, but *inter Harvey* and
Sir Geo. Reynel, 2 Car. in *Latch*, it's resolved
 that no Traverse is to be taken.

Malefeazance, Misfeazance, &c.

¶ **P**dia' Defensio die qd (Actio non)
E quia die qd pd A. ante pd primu
 diem Ianuar' quo quidm primo die
 Ianuar' pdia' C. S. hie fuit Originale
 de pdicto debito Centum libraꝝ versus
 pfat A. impetrasset scilicet vicesimo sep-
 timo die Decembꝝ Anno (Ec.) apud
 L. in Com' L. retinisset ipsum G. foris
 Attoꝝ p eodem A. in quodam plico de-
 bi super demand' ducent' mcaꝝ quas
 quidm ducent' mcas pdcus A. p billam
 eam Dño Rege apud Westm' pdia'
 termino Sed Willarii tunc pr' sequen'
 versus pfat A. exigere voluisset, Et
 idm A. eodm vicesimo septimo die De-
 cembꝝ Anno (Ec.) supradcto apud L.
 pdia' ultius requisivit ipsum G. ad com-
 pend' ut Attoꝝ p eodem A. ad quelibet
 hia sive qualibet Acciones que versus
 ipsum A. ad sectam alicuius sive ali-
 quaz psonaz psecue' forent p quod idem
 G. ad pd Octab Sed Willarii ad pd hie
 quod pd C. extra pd Cur Cancellar' pd
 pdicto

*En Trans' sur
Case versus un
Attorn' pur
appearing
sans garrant,
&c. Le At-
torney plead
Retainer pur
le Plaintiff,
&c.*

Case.

pdico primo die Ianuar Anno (Ec.)
 sus eundm J. de deho pdeo impetrasse
 & retornabile ad easdm Octabas Sc
 Hillarii ut Attozm p eodm J. compuit
 & ad Narracon pdia' C. pdia' super bz
 versus pfar J. in forma pdia' declara
 petiit licentiam p eodm J. inde intlo
 quend usq ad pd quinden Pasche tunc p
 sequend ante qm quidem quinden Pasch
 scilicet die (Ec.) Anno (Ec.) supradco idem
 G. apud L. pd in pdico Com L. deli
 bavit eidm J. copiam Narraconis pdia
 sup hze pdcu versus ipsum J. in form
 pd declarac ut idem J. ipm G. tunc
 existend Attozm suu informaret qual re
 spons idem G. p eodm J. ad narracon
 pd C. pd ad pd quinden Pasch faceret
 idem G. ultius die qd pd J. ante p
 quinden Pasche seu ad eandem quin
 den Pasche seu infra quatuordecim die
 tunc pr' sequend eandm quinden Pasch
 non informavit ipsum G. ad tunc existi
 Attozm suu quam seu qual respons idem
 G. pro pfar J. ad accionem pdia' face
 ret p quod idem G. p defectu respons al
 eodm J. ad respondend pfar C. coac
 p regulas pemptorias pdia' Cur die
 Dni Regis nunc hic de Banco pdia' G
 dixit qd ipe tunc non fuit informd p
 J. magrm suu de aliquo respons p e
 dm J. p pfar C. in loquela pdia' dan
 put ei bene licuit Et hoc (Ec.) unde pe
 judiciu si acco, Ec.

Repl'.

Protestando qd
 non retinuit
 pro placito non
 requisivit de.
 fend' ad com-
 parand'.

(Precludi non, Ec.) Quia Protestan
 do qd pdia' J. non retinuit pfar G
 fore Attozm p eodm J. in pdia' plit
 sup

sup de
 p Bil
 Westm
 versus
 pdia'
 idem
 far G.
 J. ad
 fones
 ruius
 forent
 Et ho
 tibi ad
 Et p
 J. req
 tozm
 quadi
 leam
 pserut
 Et de
 J. fin
 Note
 shall in
 out W
 our of
 or will
 my Ca
 Dyer 3
 So i
 and sha
 Land
 Orig. 1
 So i
 authority
 So i
 de Pa

sup demand ducunt mear quas p'dict' T.
 p Willam coram d'co D'no Rege apud
 Westm p'dictam Termino Sed Willarii
 versus ipm J. exigere voluisset prout
 p'dict' J. superius allegavit p p'to
 idem G. dicit qd ipd non requisivit pre-
 fat G. ad comparend ut Attorn p eodm
 J. ad quelibet b'ria sive ad qualibet ac-
 tiones que versus ipm J. ad sextam ali-
 cuius sive aliquarum personarum prosecue-
 rent put p'dict' G. superius allegavit,
 Et hoc, (Ec.) una cum dampnis, (Ec.)
 sibi adjudicari, (Ec.)

Et p'dictus G. ut prius die qd p'dict' Rejoinder
 J. requisivit ipm ad comparend ut At- and Issue,
 torn p eodm J. ad quelibet b'ria sive quod requisi-
 qualibet actones que versus ipm J. ad vit.
 sextam alicuius sive aliquarum personarum
 prosecue rent put ipd superius allegavit
 Et de hoc pon se super priam Et p'dict'
 J. similiter, Ec. Vide Clerk's Assist. 286.

Note, Case lieth against an Attorney that
 shall ingage in a Suit for or against me with-
 out Warrant, or that having Warrant shall,
 out of Negligence or Ignorance, negligently
 or wilfully miscarry himself, and mismanage
 my Cause to my Damage. 6 Co. 9. 7 Co. 1.
 Dyer 361.

So if he be retain'd by me in my Cause,
 and shall make Default in my Suit, whereby
 Land is lost. Lib. Int. 2 Sect. A. 1. Reg.
 Orig. 113. a.

So if he plead otherwise than he hath Au-
 thority from me. Stiles Reg. 4.

So if he imparle in a Suit of mine, where
 the Party is misnamed, and because he loseth
 F f the

Case.

the Advantage of the Plea in Abatement,
15 H. 7. 14. *Quære.*

So if he shall in a real Action against me suffer Judgment to be given against me by Agreement, and the Land to be lost. *F. N. B.* 95, 96. 6 Co. 9.

So for suing another Man in my Name without Warrant or Consent of mine so to do, altho' it be upon good Cause, *F. N. B.* 98, 2 Cro. 88. *Vide Stat.* 8 Eliz. chap. 2. whereby Penalty is given.

So if he outlaw me in the Name of B. which B. at the Time is dead, 7 Co. 1. and the like. *Vide Hutt. Rep.* 125, 126.

*Ad action' ver-
sus Actorn' pro
Cogn' satisfac-
tion' super Ju-
diciu in dote
sine Warrant'.
Def' placitat'
qd' Quer' re-
tinuisset eam
ad Cogn' satis-
faction'.*

Et p'dict' M. in ppria p'sona sua ven-
t' & defend' vim & injuriam quando-
Ec. Et dicit qd' p'dict' P. & W. ac-
nem suam p'dictam vsus eum here non
debent quia die qd' p'dictus P. post judi-
ciu p'dictu reddidit & ante p'dictum septi-
mum diem Februar Anno sexto supra-
dicto scilicet decimo die Januar Anno
sexto supradicto apud D. in Com D. re-
tinuit ipm W. essendi Attornu ipsorum
P. & W. in Cur dci Dni Regis hic ad-
cognu pro se & in noibus ipsoru P. & W.
& in eor noibus tanqum eor Attornu in
eadm Cur hic qd' satisfact' fuit eis de va-
loze & dampnis p'dictis virtute cujus re-
tentonis idem W. postea scit p'dictu sep-
timo die Februar Anno sexto supradic-
to ven in p'dicta Cur dci Dni Regis de
Banco hic scit apud Westm p'dicta &
ut Attornu ipsoru P. & W. & in eor no-
bus cognu qd' satisfact' fuit eis de valo-

& dampnis p̄dictis p̄out ei bene licuit
Et hoc parat est verificare unde petit
iudicium si p̄dicta' R. & M. acconem
suam p̄dictam versus eum habere de-
beant, &c.

(P̄cludi non debent) Quia die qđ
p̄dicta' R. post iudicium p̄dictum reddidit
ante p̄dicta' septimum die februar An-
no sexi sup̄radicto non retinuit p̄dicta' M.
essendi Attoꝝ ipsoꝝ R. & M. in Cur-
dia' V̄ni Regis hic ad recogni p̄o & in
noibz ipsoꝝ R. & M. tanquam coꝝ
Attoꝝ in eadē Cur hic qđ satisfac-
uit eis de valore & dampnis p̄dicta' p̄o-
ut p̄dicta' M. sup̄ius allegavit, Et hoc
petit qđ inquiratur p̄ p̄iam Et p̄dicta'
M. similie Nō p̄cept est vie, &c.

Repl.
Non retinuit.

Vide Ast. 39. Roll: Ent. 38. Qđ fuit re-
tent p̄ Principalem in Script Ob̄t,
Hern 181. Bar qđ quē retinuit eum ad
comparend in una accone & requisit eum
comparere p̄o eo in om̄ibus al acconi-
bus R. p̄t p̄tē qđ non retinuit, &c.
p̄o p̄lito non requisivit, Id 183. 1 Bro. 33.
Bar p̄ Retepner p̄ Estranger ad com-
parend p̄o Quē per quod ill compar,
Et in defcō Instrukō p̄litabit non in-
form, Rob. Ent. 18. 99. Repl p̄o non re-
tinuit, Id. 20.

Issue.

If an Attorney or Officer shall do any
Thing besides or contrary to his Trust, (as
before) or levy a Fine, suffer a Recovery, ac-
knowledge a Judgment, enter a Suit, a Bail
or Recognizance in my Name, by which I

Case.

am damnified, I may have this Action against him. *F. N. B.* 98. 100. 19 *H.* 6. 44.

Note, That it is a Rule, That if a Sheriff, or other Ministerial Officer of any Court, shall make a false Return, or shall otherwise misdemean himself by any Malefeazance, Nonfeazance or Misseazance whatsoever, and I have any special Damage by it, I may have an Action on the Case.

For not executing of a Writ by an Officer, Sheriff, &c. *vide* 1 *Cro.* 173, 175, 873. 5 *Co.* 89. 9 *Co.* 6. *Plow.* 48. *Noy* 89. 3 *Bulst.* 200.

For not returning it when 'tis executed, 42 *Aff.* 12 *Ed.* 3. 3. 21 *Ed.* 3. 43. 10 *H.* 7. 23.

Concerning the Clerk of Assizes, 34 *H.* 6. 4.

For Misreturn, 19 *H.* 6. 29. So for any false Return, *F. N. B.* 95, 97, 98. 6 *Co.* 9. 9 *Co.* 32. *Dyer* 353. *Stiles Rep.* 431. 11 *Co.* 94.

Concerning [*Summonitus*], 2 *Ed.* 3. 14. 112. *b.* *Reg. Orig.* 12. 8 *Ed.* 3. 330. *Aff.* 38. 30 *Ed.* 3. 37, &c.

Nihil, *N. B.* 93. *B. Lib. Int. C. Sect.* 2.

Non est inventus, *F. N. B.* 39. 31 *Ed.* 3. *Process* 55. 1 *Cro.* 729.

Nulla Bona sur fieri fac, *Stiles Rep.* 474.

Averia estraiat, which are dead, *Leon. Pl.* 203. 32 *H.* 6. 27..

Devastabit, and it is false, 5 *Co.* 32. *Lib. Int.* 11. *A.*

Cepi Corpus, and have not the Body, 1 *Cro.* 460. 624.

Languidus, where the Party is in Health, 11 *H.* 6. 42. *Pl.* 39. 2 *H.* 6. 5. *A.* 21 *H.* 6. 5. *A.* *Sed.* 8 *Cro.* 852. 868.

Against

Against Bailiff of a Franchise, *F. N. B.* 93.

Case.

2 Ed. 3. 43.

Against a Procurator, Summoner, or Apparitor, *12 Co.* 128. *2 Bulst.* 264.

Commissary, *22 H.* 6. 30.

Escheator, *Reg. Orig.* 115. *21 Ed.* 4. 23, 27. *9 H.* 6. 60.

And so for any such like Officer, *1 Cro.* 512.

Actio non, Quia die quod pdia' N. (tali die & anno) supradicto in Parochia & Warda pd' delibavit pdia' billam obligatoriam pfat' C. pro pdia' duodecim libris in eadem villa spee tunc ibi eidem N. p' eundem C. solue ad scriptum illud pfat' D. nomine acquiescentie earundem duodecim librarum deliband' & sic p' ipsum C. solue cancelland' p' quod idem C. pdia' primo die Junii villam illam fregit & cancellabit prout ei bene licuit Absq' hoc qd' pdia' N. delibavit villam pdia' eidem C. put idem N. superius versus eum queritur Et hoc paratus est verificare unde petit, &c. (Precludi non debet) Quia die qd' pd' N. delibavit pfat' C. pdia' villam obligatoriam salvo & secure ad usum ipsius N. custodiend' & eidem N. cum inde requisit' fuisset redeliband' modo & forma put idem N. superius vsus eum queritur Et hoc petit, &c. Vide Rast. Ent. 7.

Sur Script' cancellas.

Repl.

Issue.

Actio non) Quia die qd' iidem N. & M. post decimum diem Junii Anno tunc supradict' & ante pd' (talem diem) tunc pr' sequend' nulla fuerunt bona seu catalla

Deuastaver' bona juxta rectori'

Case.

catalla que fuerunt pdia' W. tempore mortis sue in manibus ipsorum N. & M. Administrand sed quod idem N. & M. oia bona & catalla que fuerunt pdia' W. tempore mortis sue vendiderunt & devastaverunt & denarios inde provenien in proprios usus suos converterunt Ita quod pdia' serdecim libys seu aliquam inde parcelle fieri facere non possunt put p pdia' Hetero ipsius R. plenius apparet, viz. apud B. in Com V. Et hoc parat est verificare, (&c.)

Issue.

(Precludi non) Quia dic ad ipsi non vendiderunt nec devastaverunt aliqua bona seu catalla que fuerunt pdia' W. tempore mortis sue prout pdia' R. superius allegavit Et hoc, (&c.) Vide Rob. Ent. II.

*Alia b'ria non
deliberat'.
Li. Lo'.*

Et pdia' A. B. & C. D. p— Attoznd suu vend & defend vim & injuriam quando, &c. Et omnem contemptum & quicquid, &c. Et petunt inde diem interloquendi & eis conceditur, &c. Et super hoc dies inde dat est partibus pdia' coram Dño Rege usq; a die Pasche in quindecim dies ubicunq; &c. videlicet pfae A. B. & C. D. ad interloquend & tunc ad respondend, &c. Ad quem diem coram Dño Rege apud Westm vend partes pdia' p Attoznd suos pdia' Et pdia' A. B. & C. D. ut prius defend vim & injur quando, &c. Et omnem Contemptum & quicquid, &c. Et Protestando qd ipsi in loquela pdia' int pdia' R. S. & pfae C. W. in dica Cur Civitatis

Protestation.

tatis &
jure &
pdia'
partib
sedm l
p plac
suam i
debet
proced
libera
cisdem
pdia'
suppo
prout
(&c.)
Et
sua p
debet
ceden
modo
tord
inqu
& C.
Vide
No
proc
stay
notw
So
Min
reful
his
Act
Plor

ratiss p̄dix' cum ea celeritate qua de
jure & scdm legem & cons Civitatis
p̄dix' potuerunt p̄cesserunt & eisdem
paribus Justicie Complementum inde
scdm legem & cons. p̄dix' fieri fecerunt
p̄ placito dic qđ p̄dix' R. S. actionem
suam p̄dix' versus eos manutenere non
debet quia dic qđ p̄dix' tria b̄via de
procedendi in loquela p̄dix' spec non fuer
liberat nec corū aliquod libatū fuit
eisdem A. B. & C. nec eorum alteri put
p̄dix' R. S. per b̄re & narr sua p̄dix'
suppon Et hoc parati sunt verificare
p̄out Cur, (Ec.) unde per judicium R.
(Ec.)

Et p̄dix' R. S. dic qđ ipse ab actione
sua p̄dix' p̄ aliqua p̄allegat p̄cludi non
debet quia dic qđ p̄dix' tria b̄via de pro
cedendo liberata fuer p̄d' A. B. & C. D.
modo & forma put idem R. S. p̄ narra
tionem suam p̄dix' suppon Et hoc per qđ
inquiratur per p̄riam & p̄dix' A. B.
& C. D. similiter Iō ven Jur, (Ec.)
Vide Rast. Ent. 84.

Repl.

Issue.

Note, That Case lies against him that shall
proceed upon a Prohibition delivered him to
stay a Suit he had against me, and he proceed
notwithstanding, *F. N. B. 92. a.*

So if a Sheriff, or any other Officer or
Minister of Justice, shall not do, or for his Fee
refuse to do, or do amiss any Thing about
his Office to my Prejudice, I may have this
Action against him, 5 Co. 89. 9 Co. 60.
Plow. 48. 19 H. 6. 29.

*Al Accon' port
pur Novel ere-
Her d'un Meafe
al Nufance del
ancient Meafe
del Plaintiff.*

Bar.

*Per Custom de
London con-
cernant Lumi-
niers de Meases.*

A Ccō non, (Ec.) Quia dic qđ quidam
R. S. M̃il diu antea p̃dica' tempus
in Parr p̃dica' sup̃p̃it scitit decimo die
Aprilis Anno regni Dñi Caroli secundi
nup, (Ec.) vicesimo fuit seie de & in uno
messuagio, (Ec.) pr' adjungend messua-
gio p̃dica' A. B. Et sic inde seisit existend
p quosdam Articulos sigillo ipius A.
sigillat & hic in Cur plac fac' apud L.
p̃dica' in parochia & warda p̃dica' primo
die Maii Anno Dñi, (Ec.) agreeatum
fuit inter p̃dica' R. S. & p̃dica' A. B.
modo & forma sequend videt quod p̃dica'
R. S. agreasset facer plac A. B. Execu-
torib' Administratozib' & Aliis suis
bon & sufficiend dimission (Anglice Lease)
in lege de duobus Messuag scituat in,
(Ec.) cum ptin nup in occupacon quo-
rundm M. & P. pro termino triginta
& unius annor hend a Festo Scđ Johis
Bapt' tunc pr' sequend p & sub annual
reddie 60 l. legis monete Anglie sol-
vend quarterialit prima solucon super
Festum diem Scđ Michis Archi Anno
Dñi, Ec. Et super bona ulteriozi consi-
deracon qđ p̃dica' A. Executores & Ad-
ministratores vel Aliis sui infra duo-
decim menses pror' sequend erogaret &
erponeret sumam quadzngent librar
in nova edificacon messuagior p̃dica'
At qđ dimensiones (Anglice the Scant-
lings of Fur) p tant tenement p̃d' quant
ip̃d idem A. de novo edificaret appro-
bati

Pari forrent p duas psonas quas ipse p̄d
 & p̄dix' A. eligerent ad ppositum il-
 lū Qd̄q in psecucon (Anglice pursu-
 ance) & pformacon Articulon p̄dix' p̄e-
 ritus R. p Indenturam int p̄dix' R. &
 fac' quinto die Novemb Anno
 (R.) dimisit p̄dix' messuagiū (int al)
 ppe messuagium p̄fac R. adjungen p̄fac
 a festo Scd Johis Baptis' tunc pr'
 sequed ante dat Indentur ille durand
 termino trigene & unius annorum Vir-
 tute cujus quidem dimissionis p̄dix' A.
 in messuagium p̄dix' intrabit & fuit in-
 possessione Qd̄ quidm messuagium
 tempore dimissionis p̄dix' fac' fuit anti-
 quū messuagiū & fuit pr' & contigue
 adjungen p̄dix' messuagio p̄dix' R. in
 barracon p̄d supius menconat Qd̄ p̄d
 fenestra in Culina p̄d messuagii p̄dix'
 in barracon p̄d menconat fuit con-
 tigue adjacen ad & flus p̄d messuagiū
 p̄dix' A. quodque antiquum messuagiū
 p̄dix' A. p̄dix' (tal die) Anno, (R.)
 p̄dix' fuit vetustū in decalu valde
 indigen & necesse reedificari & construi
 illa parte sic adjacen & adjungen p̄d
 messuagio p̄dix' R. Idemq A. ulte-
 rius die quod Civitas London est & a
 tempore cujus contrar memoria hominū
 existit fuit antiqua Civitas Qd̄q
 eadē Civitate hetur & a toto tem-
 pore cujus contrar memoria hominū non
 existit hebatur t̄lis laudabilis & anti-
 qua consuetudo usitat & approbat vi-
 det qd̄ si quis huit messuagiū vel do-
 mū in p̄dix' Civitat L. ppe vel conti-
 gue

Case.

que adjungen vel adjacen alteri messuagio vicini sui ibidem & fenestre vel luminar tñs messuagii vel domus suæ aspicien vsus alterum messuagiū vicini sui sic adjacen vel adjungen licet huiusmodi messuagia & domus ac luminar fenestre inde fuer antiqua tamen humo vicinus ppietar pñia' alterius messuagii sic adjacen vel adjungen p & iure consuetud Civitat pñia' in eadem Civitate per totum tempus pñia' usitat approbat bene & licite potest potuit consuevit ad libitum suum pñia' alterius messuagium suū sic adjacen & adjungen de novo super antiquam fundaco[n]em [Anglice the ancient Foundation] in tantā altitudine edificare quant ppietat domus pñia' sic de novo construendū placuit sursum adversus & ex opposito p luminar & fenestris vicini sui adjungen & luminar & fenestre obscurare nisi vel fuit aliquod special scriptū Chirographium vel Recordū conventio[n]is vel restrictionis in contrariū in ea parte: pñia' dñs A. postea scit (tal die) Anno (Et.) sapradicto apud London pñia' parochia & warda pñia' p & iuxta consuetud pñiam pñia' messuagium in possessione sua ut pfertur existē pñia' messuagio pñia' it. ut pfertur adjungen rupit [Anglice did take down] ac super antiquam fundaco[n]em ppe Culinar pñia' it. in Parraco[n] pñia' menconat (super quam pñia' messuagium pñia' A. pñia' itea stetit) ibm in ea parte adjungen & adjacen pñia' messuagio pñia' it.

pñia'

fenestre in Culina p̄dicta' inde ad-
versus & opposito in novum messuagiū
domū ibi edificabit & proinde fenestre
p̄dicta' in Culina p̄dicta' (nūl special' scrip-
tographo vel Recor'd' conveniend' in
contrarium inde in ea parte tunc vel
quam ante hac existēd' p̄ totum tem-
us in Narracōd' p̄d' menconat' rōne in-
struatur p̄dicta' obscurabit & obstruxit
ut ei bene licuit Et hoc parat' est ve-
ficare Unde petit Iudicium si p̄dict' R.
tionem suam p̄d' inde usus eum here
manutenere debeat, &c.

Vide Bro. Red. 100. Vidian 29. Co. Ent. 20.
Def. justitie repacōd' guttur Et p̄scribe p̄
que cursu sive Canali Rēpl' quod fecit
guttur pro passag' sanguinis & sordido-
rum Et travers' p̄scribe pro aque cursu,
&c. Hern. 237. Bar qd' Def. possess. de
Hess. & Curtilag' in Civit' B. p̄ neces-
sario usu erexit cumulum fasciū in
Curtilag' Et Travers' le Prescription
de Luminers Et Issue sur le Traverse.
Rob. Ent. 8.

De Erectōd' Cois' pistrini. 1 Bro. 47.

De Exaltacōd' Riparum. Rob. Ent. 45.

Note, It's said, That if a Man set up a House
upon a new Foundation so near to my House,
that thereby he stop up my Window and take
away my Light and Prospect, I may have an
action of the Case against him.

But if his Buildings be upon an old Founda-
tion, and where there was a House before, no
action will lie for this; for *cujus est solum, ejus
est usque ad Cælum*, 5 Co. 10. 9 Co. 55. New
Ent. fol. 19, 20. Vide postea.

Also

Case.

Also if a Man do over-build my House that his House-Eves do drop upon my House and cause it to perish, or trouble my Dwelling, I may have an Action against him
22 H. 6. 14.

So the Erecting of a Dye-house, Pig-stye, House of Office, Brew-house, &c. may be Nufance.

For that of Pig-styes, *vide* 5 Co. 73, 101.

For a Brew-house, Chandlers Shop,
13 H. 7. 26. 1 Cro. 367.

In Banco Reg'.

An Action for cutting down the Bank of a River, whereby his Meadow adjoining was surrounded; the Defendant justifies by Prescription for the Reparation of his Mill. The Plaintiff demurred, and adjudged against the Plaintiff that the Prescription was good, in the Manner of Pleading; but upon Error brought in *Scaccario*, and assigned thus, (or For that he prescribed to cut down the Bank between the River which runs to the Defendant's Mill, and the River called *Old Charwell* and saith, That he cut down the Banks of said River; and saith not between the *Charwell*, pursuant to the Prescription: The Court held it to be an incurable Fault, and therefore the Judgment was reversed, and the Record remanded; and the Court of King's Bench, against their former Judgment, awarded a Writ of Inquiry of Damages, *Hetl. Rep.* 1 Cro. 747. *Winchcombe* and *Shepherd*.

An Action was brought against the Defendant for stopping of Three ancient Ligh-

which had been there Time out of Mind, and the Defendant stop'd them up totaliter, dampnum, &c. The Defendant confessed Stopping of Two of them, and Part of the Third, and justifies by the Custom of London, that one may build upon an old Foundation, upon his own Land, &c. It was adjudged for the Plaintiff, 1 Bulstr. 116. Newal and Ward; because he traversed absq hoc, that he stop'd up the Third; whereas he should have pleaded Not guilty to the other Part of the Third Light.

In an Action upon the Case for the stopping Water-course, which had used to have its current from such a Place, through such a Place, and so to come into the Neighbour's Pond, and there to supply a Pond with Water for the necessary Watering of his Cattle; the Defendant had erected a Stone-Wall so hath stop'd it, that thereby the Plaintiff lost his Water, and was thereby damaged. The Defendant pleaded in Bar an Unity of Possession in the Land, of the House and Land to which, and of the Land through which, and of other Land of which, &c. And the Question was, Whether this Unity of Possession will extinguish this Water-course? and the whole Court agreed, That the Water-course was not extinct thereby, and the Defendant's Plea not good: Judgment for the Plaintiff. But it was agreed, that for Common and private Ways, and Common appendages, and such like Profit out of Land, such things will be extinct by Unity of Possession; but not publick Ways and Water-courses, 1 Bulstr. 340. Shery and Piggot.

The

Case.

The Plaintiff declares in an Action upon the Case, for laying several loads of Logs in the Highway in C. to B. whereby the Way was much streightned, so that the Plaintiff riding in the Evening of such a Day on the said Highway, his Horse stumbled upon the Blocks, and much hurt him; for which, &c. The Defendant confess'd it to be a Highway but saith, that the Town of C. is an ancient Village, wherein all the Inhabitants having ancient Houses, used to lay Logs in waste Places of the said Way, before their Doors for their Fuel, leaving sufficient Passage for Chariots, Horsemen and Footmen, and that he was seised in Fee of an ancient House, and laid Logs for his Fuel in the waste Places of the Highway, leaving sufficient for Passage for Chariots, Horsemen and Footmen: And the Plaintiff riding by the Highway, improvably turn'd his Horse upon the Logs, and fell, &c. The Plaintiff demurs. And it was adjudged that the Action well lay for the Plaintiff; because he having Special Damage, had Cause to bring that Action, altho' the Nufance be publick Nufance, and that the Prescription to make a Nufance is not good; for it is against Law to prescribe in such a Manner, &c. *2 Cro. 446. Fowler and Saunders. 5 Co. 73.*

For the Nufances of stopping Water-courses by Rubbish, &c. *Vide 1 Cro. 191, 402.*

For cutting down the Banks of a River. *1 Cro. 747. Hetl. 118.*

For stopping Rivers, by which they overflow my Ground, *Godb. pl. 68.*

For diverting them, by which my Ground
dried, &c. *Godb.* 70. *Dyer* 248. *Jenkyn*
Cent. 6. *Cafe* 65.

— By which my Mill is hindred, 2 *Cro.*
63. *Stiles Rep.* 370. 4 *Co.* 86.

And Note, That in common and publick
Nufances done in the publick Ways, the pro-
per Way of Redreffing the fame is by Present-
ment and Indictment at the Seflions, or at the
Law-Day Court. Yet if, by Occafion of fuch
publick Nufances, any Man happen to have
fpecial Damage above another Man, as when
by digging a Pit, or laying a Block in the
Highway, he or his Horfe is hurt, he may have
this Action on the Cafe for it. See *Stiles* 335.
Rep. 166. 1 *Bulft.* 47. 5 *Co.* 103. 1 *Cro.* 604.
2 *Cro.* 446. 9 *Co.* 113.

Note, That befides the general Divifion made
before in Bars as to the Actions on the Cafe,
viz. That they are generally either concern-
ing Words or Deeds: They may be, and are
more particularly divided as follows, *viz.*

1. Bar inde fur Affumpfit General.
2. Al Actions del Exec vel Adm.
3. Bar p Exec & Adm.
4. De Rebus Venditis.
5. De rebus deliberand.
6. De denar recept, &c.
7. De Servientibus.
8. De Terris.
9. De Opibus & Salaris.
10. De Arbitrio pformand.
11. De Feodis Attoꝝ.

12. De

Case.

12. De Action vers Attoꝝd.
13. De Vicecomitibus & al.
14. De Seais.
15. De indempn conserband.
16. De Maritag.
17. De manger & boyer.
18. De curis morbozum.
19. De negligence & misfeasance.
20. De Rebus Mercatoris.
21. Bar al Warrantie.
22. Al Wager.
23. Al Deceit.
24. De franchises Testis.
25. De indebita prosecutione.
26. De Disturbance de Common.
27. De Disturbance de Offices.
28. De Nufance.
29. Bar al non fefance.
30. Bar al Trover.
31. De Imposicion Criminu.
32. De Indictamentis.
33. Bar al Slander.
34. Al Courts General.
35. Al Scdm Cons Regni fundit.
36. — Audicia inde.

For which see Mr. Cornwall's new printed Tables, Tit' Action sur le Case, in Bar inde.

See also the General Abridgment lately published.

1. As to Pleadings in Actions for Fire. Fol. 11.
2. Pleading in Actions against a Carrier. Id. 13.
3. Plead

3. Pleading in Actions against Inn-keeper. *Id.* 18.
4. Pleading in Actions of Trover. *Fol.* 23,
- 25.
5. Pleading in an Assumpsit. *Id.* 69, 77.
6. Pleading in Actions for Words. *Id.* 166, 162, 170, &c.
7. Of a Nufance. *Id.* 172.
8. Pleader and Declarations in nature Dis-
ceit upon a Warranty. 178, 184, &c.
9. The like on Cases in nature of a Writ of
Conspiracy. 211, &c.
10. For a false Return. *Id.* 179.
11. For an Escape. *Id.* 190.
12. Upon Legal Proceedings in Courts.
Id. 194, &c.
13. Pleader in Actions upon the Case in
general. *Id.* 214.
14. *Vid.* *ibm fol.* 720, &c. Tit. Bar.

Bar in Covenant.

Et p̄dict V. p̄ A. B. Attor̄n suum
ven̄ & defend̄ vim & injur̄ quan-
do, &c. Et dic̄ qđ ipse non infregit con-
ventionem p̄deam̄ modo & forma put
p̄dict J. sup̄ius versus eum queritur.
Et de hoc pon̄ se sup̄ priam̄ Et p̄dict J.
alter (&c.) Ideo p̄cept̄ est Dic̄ qđ Ve-
nire fac̄ hic die Mercur̄ pr̄ post tres
septimanas Scđ Trinitat̄ duodecim, &c.
quos (&c.) Et qui nec (&c.) Ad re-
coḡn (&c.) quia tam (&c.)
Vide Rob. Ent. 170.

*Non infregit
conventionem
modo & forma,
&c.*

G g

f. Quando

Covenant.
Le Def. pleá
Performance de
tous Covenants
in general.

¶ **Q**uando (Ec. Acto non) quia die
qđ ipse idem P. post sigilla-
tionem & consecutionem Indenture pđd usq
diem impetraconis Wille pđict pimple-
bit pformabit & custodivit omnes & sin-
gulos convencones concessiones solucon-
nes articulos & agreement ex parte ip-
sius P. pformandi pimplendi & custodiendi
secund formam & effectū Indenture pđict
Et hoc, &c.

Sur Covenant
pur provider
pro Chivalis
les Provost.
Bar.

Qđ Def. pro-
videbat, &c.
les Provost
accordant al
Covenant.

¶ **Q**uando (Ec. Act non) quia die qđ
ipse p pđict decem Septimanas
pvidebat p pđictis sex spadonid⁹ bonum
& sufficiens fennum Acetiam bonas &
sufficien⁹ abenas cum sufficien⁹ stramine
& substramine scđm formam & effectum
Indenture pđict videt apud Manerium
pđict Et de hoc pđm se sup priam Et
pđict C. aliter (Ec.) Ideo (Ec.)

Sur Covenant
a fair Quick-
hedges.
Bar.

Qđ Def. plan-
tauit quans⁹
necesse fuit.

¶ **Q**uando (Ec.) Et die qđ pđict P.
(Acto non) quia die qđ ipse pre-
dictis temporibus consecutionis pđictarum
seperalid⁹ particat⁹ censur in Narracone
pđict superius specificat tantū de eis-
dem seperalib⁹ particat⁹ censurā cum
serobe & ripa fecit & cum virgulis (vocat
Quicksets) & plantis plantabit quantū
inde necesse fuit p ipsum C. sic fieri &
plantari scđm formam & effectum In-
denture pđict Et hoc (Ec.)

Vide Bro. Met. 130. Rast. Ent. 136. Henr.
271.

¶ Et

Covenant.

*Super Littera
A torn' ad re-
cipiend' pecun'
l. breach qd'
Def. recipit
10 l. post de-
disset potestatem
querenti illas
recipere ad
suum proprium
usum.*

Bar.

*Qd' Def. non
recepit.*

Et p^rdict J. P. p Attorn^{us}
suo ven^{it} & defendi vim & injuria
quando, &c. Et dicit qd^{am} p^rdict T. accoⁿ-
nem suam p^rdicta' versus eum here seu
manutenere non debet Quia dicit qd^{am}
ipse non recepit de p^refato M. S. p^re-
dictas decem libras sup^{er} p^rdicta' quinto
die Octobris quas idem M. S. ei super
eodem die solvisse debuit scdm^{us} formam
& effectum Condicionis p^rdicta' put^{at} p^rdicta'
T. p^{er} Narraconem suam p^rdicta' sup^{er}ius
suppon^{it} Et de hoc ponit se sup^{er} p^riam &
p^rdicta' T. aliter (&c.)

Et p^rdicta' J. p Attorn^{us} suo
ven^{it} & defendi vim & injur^{iam} quan-
do, &c. Et dicit qd^{am} ipse de accoⁿe Con-
vencionis p^rdicta' virtute Indenture p^re-
dicta' onerari non debet quia dicit qd^{am} In-
dentura illa non est factum suum Et de
hoc ponit se sup^{er} p^riam Et p^rdicta' P.
aliter (&c.)

*Indentura non
est factum.*

Vide Rob. Ent. 164. Id. 209. Non dimi-
sit al part & Demurrer al part. 1 Saund.
108. 2 Mod. Intr. 209. Vide Co. Ent. 117.
Rob. Ent. 166. Bar. de repaconibus, 1 Mod.
Intr. 140, 141. 2 Mod. Int. 208. 1 Saund. 108.
2 Saund. 418. Vidian 129. Bro. Red. 143, 157.
Winch. 144. 2 Ven. 124, 128.

Covenant.

*Conventio super
Indentur'.*

Bar.

*Per script'
relaxacon' &
tenor sequitur
in hac verba.*

ff. **E**t p̄dict' C. p - - - Attorn' suū
ven' & defend' vim & injur' quan-
do, &c. Et dic' qđ p̄dict' W. accōnem
suam p̄dict' vsus eum here se manutēd'
non debet quia dic' qđ p̄dict' W. post
consecōnem Indenture p̄dict' scilicet vicesi-
mo septimo die Novemb'is Anno Regni
dici Domini Regis nunc sexto apud
London' in Parochia & Warda p̄dict'
p quoddam scriptum suū relaxacōnis
quod idem C. sigillo p̄dict' W. signat
hic in Cur' p̄fert cuius dat' est eidem die
& anno relaxavit eidem C. omnes accō-
nes cuius quidem scripti relaxacōnis
tenor sequitur in hec verba : Be it known
unto all Men, &c. Et hoc parat' est verifi-
care Unde petit Iudicium si p̄dict' W.
accōnem suam p̄dict' versus eum here
debeat, &c.

*Al Count sur
Indenture per
Custom de
London' vir-
sus Apprenti-
cium qui de-
cessit a servicio,
&c.*

*Bar. Prote-
stand' Qd' non
est talis consue-
tudo prout, &c.
Pro pl' ito qđ
Def. obtulit
servire, &c.
& quer' recu-
savit ipsam
recipere.*

ff. **E**t modo ad hunc diem scilicet diem
Mercur' p̄ post Octab' Sed Vil-
lar' isto eodem Termiō usq; quem diem
p̄dict' D. huit licenciam ad Villam p̄-
dict' interloquend' & tunc ad respon-
dend', &c. coram Dño Rege apud Westm'
ven' tam p̄dict' C. p Attorn' suū p̄dict'
qm̄ p̄dict' D. p J. S. Attorn' suū Et
idem D. defend' vim & injur' quando, &c.
Et dic' qđ p̄dict' C. accōnem suam p̄dict'
versus eum here seu manutēdere non
debet quia p̄testando qđ in Civitat' Lon-
don' p̄dict' non hetur nec a tempore cu-
jus contrar' memoria hominū non exist'
hebatur t̄lis consuetudo usitat' & appbat'
in

in eadem qual p̄dicta C. p Narracōnem Covenant.
 suam p̄dicta superius suppon p̄testandoq
 etiam qđ idem D. non decessit a servicio
 dicti C. put idem C. superius allegabit
 p p̄lito idem D. dicit qđ ipse obtulit
 seipm̄ servire dicto C. Magistro suo du-
 rante termino annoꝝ in Indentur p̄re-
 dicta superius specificat scđm formam &
 effectū Indentur illius Qđq̄ p̄dicta C.
 eundem D. in servicio suo recipere peni-
 tus recusabit Absq̄ hoc qđ idem D. re-
 cusabit servire p̄dicta C. Magistro suo p
 restū termini septem annoꝝ scđm tenor
 & effectum Indenture p̄dicta put p̄dicta C.
 superius inde narrando allegabit. Et
 hoc parat est verificare Unde petit Ju-
 diciū si p̄dicta C. accōnem suam p̄dicta
 inde s̄lus eum here seu manutenere de-
 beat, &c.

Vide Bro. Red. 140.

Et p̄dicta P. p Attoꝝ suum
 vend & defend vim & injur quan-
 do, &c. Et dic qđ p̄dicta B. accōnem
 suam p̄dicta s̄lus eum here seu manute-
 nere non debet Quia p̄testando qđ p̄re-
 dicta B. non p̄formabit aliqua in Inden-
 tura p̄dicta in Narracōne p̄dicta superius
 specificat ex parte ipsius B. p̄formand
 p p̄lito idem H. dic qđ ipse idem H.
 tempore confectō Indenture p̄dicta ute-
 batur arte Pictoris (Anglice of a Picture
 Drawer) qđq̄ ipse idem H. a p̄d decimo
 quinto die Maii Anno Regni dicti Dm̄
 Regis nunc vicesimo sexto supradicto
 apud London p̄dicta in Paroch & Warda
 p̄dicta

*Al Count sur
 Indenture d'
 Apprenticeship
 de non inveni-
 end' convenien-
 cibum, &c.*

Bar.

*2d' Def. inve-
 niebat pro Ap-
 prentic' suo
 sufficien' diet',
 &c. quousq;
 recessit a servi-
 cio.*

Covenant.

pdia' ult. primū diem Octobris Anno Regni dicti Dñi Regis nunc vicesimo septimo supradicto (quo quidem primo die Octobris ipse idem B. apud Londō pdia' in Parochia & Warda pdictis a servicio ipsius S. sine licencia ipsi S. recessit) sufficiēd esculent poculent & lect & al necessar Apprenticio speaad toto tempore pdicto p eodem B. inveniebat & providebat juxta formam & effectum Indenture pdict' Et hoc parat est verificare Unde, &c.

Vide Vidian's Ent. 140.

*Ac accōn' per
Civem Lond. ni
versus Appren-
ticiū suū.*

Bar.

*Per Convencion'
performat' &
travers les se-
veral branches
en le Count.*

Traverse.

Et pdia' G. (quando, &c.) Et quoad fracōn Convencionis pdict' de eo qd idem G. post pdcūm festum Sed p. post datum Indentur pdict' & ante finem & terminū septem Annorū a servicio ipsius S. recessit superius fieri supposit idem G. die qd pdict' S. accō non, quia die qd pdict' S. post pdictum festū (&c.) scit pdicto decimo die M. Anno (&c.) supradcto apud Londō (&c.) ipsum G. a servicio suo pdictō amovit p quod idem G. a servicio ipsius S. cum licencia & voluntat sua tunc & ibm recessit Absq hoc qd idem G. a pdictō servicio ipsius S. sine licencia ipsius S. recessit pū pdict' S. p narracōn suā pdictā superius inde suppon Et hoc parat est verificare unde petit Judicium si pdict' S. accōnem suā pdict' inde versus eum here debeat Et quoad fracōn Convencionis pced de eo qd idem G. quamplur merchandizas & quamplur denar sum-

mas

mas ad valenc &c. de bonis & denar
 pdict S. ppriis inordinate devastabit
 superius fieri supposse idem G. die qd
 pdict S. (accō non) quia die qd ipse
 inter pcedm̄ festum (&c.) & pdict de-
 crim̄um diem M. omnes Merchandizas
 & denar summas pced S. per ipsum G.
 infra idem tempus seu ad aliquod tem-
 pus pantea recept per mandatum pdict
 S. ad usum ipsius S. ppe fidelit & or-
 dinate disposuit & convertibat Abq̄ hoc
 qd idem G. inordinate devastabit ali-
 quas Merchandizas seu denariorū sum-
 mas pced S. ppe sine licencia & volun-
 tate ipsius S. contra formam & effectū
 Indentur pced put idem S. superius
 allegabit Et hoc (&c.) Unde Iudicium
 (si accō &c.) Et quoad fraccōn̄ Conven-
 cōnis pdict de eo qd idem G. scivit
 dampnū fuisse factum p̄lat S. per pcedm̄
 M. T. in devastandū bona & catalla
 pced S. eo qd idem G. illud p posse suo
 non impedivit nec p̄lat S. inde statim
 non p̄monivit superius fieri supposse
 idem G. die qd pdict S. (accōn non)
 quia die quod ipse non scivit dampnum
 pcedm̄ fuisse factum p̄lat S. per pcedm̄
 M. T. put pdict S. per narracōn̄ sua
 pcedm̄ superius suppon̄ Et de hoc pon-
 te super Patriam Et pdict S. inde fili-
 ter Et quoad fraccōnem Convencōnis
 pdict de eo qd idem G. commisit forni-
 cacōnem cum p̄lat M. M. superius fieri
 supposse (accō inde non) Quia die quod
 ipse non commisit fornicacōnem cum p̄-
 lat M. put pdict S. per narracōnem

Traverse.

Issue.

Covenant.
Issue.

suam p̄dict̄ superius inde suppon̄ Et de hoc p̄on̄ se sup̄ Patriam Et p̄dice S. S. inde s̄liter Et quoad fraccon̄ Convent̄onis p̄dice de eo qđ idem G. ad p̄dem jocum illicitum cum diversis improbis personis lussit superius fieri supposit̄ (accō non) Quia dic̄ qđ ip̄e non lussit ad p̄dem jocum illicitum cum pila & acicula contra formam & effectum Indenture p̄dice vut p̄dice S. p̄ narratōem suā p̄dictam superius suppon̄ Et de hoc (Et.) Et quoad fraccon̄ Convent̄on̄ p̄dicta de eo quod idem G. tabernas p̄dictas frequentabit sup̄ius fieri supposit̄ idem G. dicit qđ (accō inde non) Quia dic̄ qđ ip̄e ad sepeales vices inter p̄dictum festum Scđ P. & p̄dicta decimū die M. Anno septimo sup̄radicto p̄ mandat̄ p̄dicta S. accessit ad diversas tabernas in Paroch̄ & Warda p̄dictis ad vinum ab eisdem tabernis eidem S. auferendū & deliberandū Abloq̄ hoc qđ idem G. tabernas p̄dictas sine licencia ipsius S. frequentabit contra formam & effectum Indenture p̄dicta Et hoc (Et.) Unde petit Iudiciū si accō (Et.)

Repl.
Per mainte-
nance del Count.

Et p̄dice S. quoad p̄dictum p̄litum p̄dicti G. quoad fraccon̄em Convent̄onis p̄dicta de eo quod idem G. post p̄dem festum Scđ P. primū post datum Indenture p̄dicta & ante finem & terminum p̄dicton̄ septem Annon̄ a servicio ipsius S. recessit sup̄ius in barram inde p̄litat̄ dic̄ qđ per aliqua in eodem p̄lito palle- gat̄ (p̄cludi non) Quia ut prius inde dic̄

Covenant.

Issue.

Issue.

die qđ pđict' G. a pđicto servicio ipsius S. recessit put ipđ
 S. sine licencia ipsius S. recessit put ipđ
 p. Parr suam pđcam inde supponit Et
 hoc petit quod inquiretur p Patriam &
 pđict' G. silitur Et quoad pđcm pñitum
 pđict' G. quoad fraccōn Conventonis
 pđict' de eo qđ idem G. bona ipsius S.
 non devastaret superius in barram inde
 pñitat idem S. die qđ ipđ p aliqua in
 eodem pñito pñallegat (pñcludi non)
 Quia ut prius inde die qđ pđict' G.
 inordinate devastabit quamplur Mer-
 chandizas & denar summas ipsius S.
 sine licencia & voluntat ipsius S. con-
 tra formam & effectum Indenture pđict'
 put ipđ per narracōnem suam pđictam
 superius inde suppon Et hoc petit (Ec.)
 Et quoad (Ec.) de eo quod idem G. ta-
 bernas non frequentaret superius in bar-
 ram inde pñitat idem S. die qđ ipđ p
 aliqua in eodem pñito pñallegat (pñcludi
 non) Quia ut prius inde die qđ pđict'
 G. tabernas pđict' sine licencia ipsius S.
 frequentabit contra formam & effectum
 Indenture pđict' put ipđ p narracōnem
 suam pđcam superius inde suppon Et hoc
 petit qđ inquiretur p Patriam Et pñe-
 dia G. silitur Ideo quoad triand tam
 pñitū istum quam pđictos al erit supe-
 rius junct' pñcept est Die qđ Venie fac
 die (Ec.)

Vide Privileg' Londini 324, 330, 338, 345.
 Vidian 80, 84, 140. Winch. Ent. 137, 155.

Et

Covenant.

*Al' Count port
per le survivor
des L'ffees vers
Lessor q' expul-
se le L'ffee.*

Bar.

*Per surrend'
& Issue sur
Ceo.*

Et p'dict A. p. — Attornd suu ven
defend vim & injur quando (Ec.
Et die qd p'dict C. accōnem suam p'dict
versus eum here non debet quia die qd
idem C. in dcō festo Sed Michis de
anno quinto apud L. p'dict sursum red-
didit eidem A. Manerium p'dict cum
suis ptinen p quod idem A. p'fat C. de
firma Manerii p'dict expulit & ejeti-
put ei bene licuit Et hoc paratus e
verificare unde petit iudicium si p'dict
C. accōnem suam p'dict versus eum he-
re debeat, &c.

Repl.

Et p'dict C. die qd ipd ab accōne su-
p'dict versus p'fat A. habend p aliqua
ipd pallegat pcludi non debet, Qui
die qd ipd non sursum reddidit p'fat A.
Maneriu p'dict cum ptinen in forma qu
idem A. supius allegavit Et hoc peti-
qd inquiratur p Patriam Et p'dict A.
filiater Jo, &c.

Vide Mod. Intr. 207. 1 Saund. 235.

*Al' Count port
per Executrix
vers Executor
pur ceo q' al ne
puit enjoyer ac-
cordant al Co.
venants en l'
indenture.*

Bar.

*Que Defust de-
mise un auter
mesuage en sa-
tisfaction del
damages, &c.*

Et modo ad hunc diem scit diem Ve-
neris pr post Crm Sed Trinitati
isto eodem Termino usq quem diem
p'dict R. huit licentiam ad Villan
p'dict interloquend & tunc ad respon-
dend &c. coram Dño Rege apud Westm
ven tam p'dict M. p Attornd suu p'dict
qm p'dict R. per C. S. Attornd suu
Et idem R. defend vim & injur quand
&c. Et die qd p'dict M. accōnem suam
p'dict inde versus eum here seu manute-
nere non debet quia die quod ante ex-
hibe

ibicō
arte
egni
nd C
facti
nd M
nd ap
re A.
rand
nd (
nger
acōne
stent
ia' fr
dia' &
us &
hac
erific
& ac
um h
Et p
sup
na p'd
m de
nifit e
lito
me &
ipan
acōne
onde
alcōn
ius
ut p'd
et ho
iam.
Vide

bicōnem Bille ipsius M. p̄dia' in hac Covenant.
 parte scilicet septimo die Ianuar' Anno
 Regni dcd Vnd Regis nunc quinto a-
 Civit' Lincoln p̄dia' ip̄d idem R.
 factū suū indentae dimisit eidem M.
 Mesuagiū ipsius R. jacent' & exi-
 apud D. in poch (Ec.) in p̄dia' Ci-
 L. hendi & tenend' eidem M. p &
 remino nonagint' & novem an-
 (si p̄dia' M. tam diu vivere con-
 geret) in plena satisfaccōne & exone-
 racōne omniū dampnorum p ipam M.
 sustent' & demand' ipsius M. occōne pre-
 fraccōn' & non p̄formacōn' Conventiōn
 p̄dia' & p̄dia' intracōn' & expulcōn' ip-
 E. in & sup possessionem ipsius M.
 hac parte Et hoc idem R. parat est
 verificare Unde petit iudiciū si p̄dia'
 accōnem suam p̄dia' inde versus
 hēre seu manutenere debeat Ec.

Et p̄dia' M. dic' qd ip̄a p aliqua p p̄fat'
 supius p̄fitando allegat ab accōne
 p̄dia' inde versus eum hendi p̄cludi
 debet quia dic' qd p̄dia' R. non di-
 mit eidem M. p̄dia' unū Mesuagiū in
 p̄dia' mencōnat in plena satisfac-
 racōne & exoneracōne omniū dampnorum
 ipam M. sustent' & demand' ipsius M.
 p̄dia' fraccōn' & non p̄formacōn'
 Conventiōn p̄dia' & p̄dia' intracōn' & ex-
 pulcōn' p̄fat' E. in & sup possessionem
 ipsius M. in hac parte modo & forma
 p̄dia' R. supius p̄fitando allegavit
 hoc petit quod inquiretur per Pa-
 triam, (Ec.)

Repl.
 Que Def. ne
 unques demise
 in plein satis-
 faction' Ec.
 Et tendrist Is-
 sue sur ceo.

Vide Bro. Red. 149.

CC

Covenant.

*Al Count sur
venia de fru-
ment per Inden-
ture & nient
deliver al jour
Part.*

*Que il offer a
deliver, &
laur' refuse.*

Monition done.

Et p̄dica' P. p — Attornd suū vend
defend vim & injur quando, &c.
die qđ p̄dica' P. accōnem suam p̄di
versus eam here non debet quia die qđ
idem P. post p̄dica' vicesimū diem
p̄rilis in p̄dica' Indentura specificat
& ante p̄dica' festum Sc̄i Petri in eade
Indente similiter specificat, viz. p̄di
vicesimo septimo die Junii p̄xor' an
dictum festum Sancti Petri apud
p̄dica' p̄munibit ipsum P. ad deliband
eidem P. p̄dica' trigine quarteria fru
menti apud domum manēnal p̄dica'
P. in p̄dica Villa de W. scđm forma
& effectum Indentur p̄dica' Et idem
die qđ ipse postea videt vicesimo quar
die Junii primū post p̄dica' vicesimū
secundū diem Aprilis & ante p̄dica' fe
stum Sancti Petri obtulit ad deliband
p̄lato P. p̄dica' trigine quarteria fru
menti apud W. p̄dicam scilicet ad do
mum manēnal ipsius P. ibm scđm fo
mam & effectum Indentur p̄dica' Et
idem P. eadem trigine quarteria fru
menti de eodem P. adtunc & ibm re
pere recusabit Et ulterius idem P. d
qđ ipse semper a p̄di vicesimo primo d
Junii hucusq; parat fuit & adhuc exist
ad deliband p̄dica' P. p̄di triginta qua
teria frumenti scđm forma & effectū I
denture p̄dica' si idem P. ea de eodem
recipe voluerit Et hoc parat est veri
care unde petit judicium si p̄dica' P. a
cōnem suam p̄dica' versus eum here d
beat, &c.

Et p̄dicta' P. dic qđ ipse p aliqua palle Covenant.
 gar ab accōne sua p̄dicta' habend p̄cludi Repl.
 non debet quia not cogn aliqua per p̄e-
 dicta' P. p̄allegat esse vera dic qđ p̄e-
 dicta' P. non obtulit ad deliband eidem
 p̄dicta' trigine quarteria frumenti
 formam & effectum Indenture p̄e-
 dicta' put p̄dicta' P. supius allegavit Et
 petit quod inquiratur p p̄iam Et
 p̄dicta' P. similiter Jo, &c.
 Vide Rast. Ent. 134.

All Part in Covenant pur default des
 Reparations.

Et p̄dicta' J. in p̄op̄ sua ven & Def. pleads,
 defend vim & injur quando (&c.) he had assign-
 et dic qđ p̄dicta' T. III. (Accōn non) ed the House,
 ma dic qđ post dimission messuagij and that af-
 p̄dicta' cum p̄tin eidem J. p p̄dicta' terwards it
 W. patrem in forma p̄dicta' fact' ac was burnt,
 integm mesuagiū illud dicitum sibe and that it
 moluum fuit scilicet 27 die Martij was well re-
 anno Regni Dñi Regis nunc 17 apud paired before
 p̄dicta' in paroch & Warda p̄dicta' the Bill exhi-
 em J. concessit & assignavit cuidam bited.
 J. gen Executor Administrator &
 assign suis mesuagiū p̄dicta' cum p̄tin
 totū statū jus titlum & termin an-
 num p̄dicta' J. W. de & in eisdem
 tunc ventur & inexprat Virtute
 arq. quidem concession & assignacōn
 em G. J. in mesuagiū p̄dicta' cum
 tū intrabit & fuit inde possessionae
 sic inde possess' existend p̄dicta' cum
 pertin

Covenant. *pertinē postea per magis incendium quod maximam partem Civitatis Londonie combussit & combussit combustum & structum & tollit dirutum fuit Quod in convenienti tempore post destructionem mesuagii predicti & ante exhibitionem brevis ipsius T. W. predicti scilicet primo Aprilis Anno Regni dicti Domini Regis nunc 21 mesuagii predicti cum pertinenti & sufficienti re-edificat reparat suppositum sustent & manutene fuit cum necessariis necessariis reparacionibus & emendacionibus Et adhuc in bona & sufficienti reparacione existit juxta formam & effectum Indenture predicti Et hoc (&c.) &c. &c.*

Ed. Saunders.

Demurrer.

Plaintiff Demurs: Et per causas eo quod per Jasperus non dicit per quem mesuagium predictum re-edificatum fuit nec monstrat per plitum suum infra quod certum tempus mesuagium predictum fuit re-edificatum post combustionem inde in quod Cur die Domini Regis hic adjudicari posset utrum fuit re-edificat in convenienti tempore Et quia placitum est in certum negativum pregnans & ratione forma.

W. Jones

Defendant joyns in Demurrer: And the Plea was held ill, for not shewing by whom the Mesuage was repaired, &c. *Vide* 2 Saunders 421, 422. where he adds Et ceo come j pense sans aucun consideration del ma

ter en Ley, le quel le Plea fuit sufficient Covenant.

qu
ou nemp.

E t p dicit J. p J. W. Attornd suu ven
E t defend vnu E injur quando, &c.
et dic quod p dicit C. D. accōnem suam
p dicit inde Hlus eum here non debet
p dicit dic qd p dicit R. C. in vita sua post
confercon Indentur supius primo men
lonat prestravit toe p dicit tres domus
que dicto tempore confercon ejusdem In
dentur fuer stane E existend sup dimissa
dimissa E de novo erexit edificavit E ex
erexit sup dia solium in eisdem loc ubi
p dicit tres domus sic psternat sic fuerunt
stane tres al domus tante magnitudi
nis quant p dicit tres domus sic pster
nat fuerunt qd idem J. C. a p dicit
tempore mortis p dicit R. C. de tempore
in tempus durand toto p dicit termino vi
ginti E unius anno bene E sufficient
reparabit sustinuit conserbavit E manute
nit omnes ill tres domus sic de novo
edificat cum p dicit E tres domus ill E
quamlibet eard sic bene E sufficient re
parat sustent conserbat E manutene in fine
p dicit termini vigint E unius anno
rursus reddidit E reliquit sedm forma
convencon p dicit in ea parte Et de hoc
pon se super priam Et quoad non repa
rat paviament aree p dicit idem J. dic
qd ipe idem J. non pmitit paviament
aree p dicit fore fract dirupe seu in decasu
p defectu reparacon inde nec paviament E
muros E area quercea p dicit seu aliqua
item inde fore fract dirupe seu in decasu
su

Breach for
permitting
one of the
new erected
Houses to fall
down before
the End of
the Term,
and other De
faults in not
repairing.
Defendant
pleads perfor
mance spe
cially to each
Breach as
signed, &c.

Covenant.

su p defectu reparacon inde ad finem p
 dia' termini viginti & unius anno
 moda & forma put pedia' C. superius
 versus eum queritur Et de hoc pon
 sup piam Et pedia' C. aliter Et quoa
 pmissionem regular laterar fenestre & mu
 roꝝ Ciment in Barracon pedia' menci
 nat fore & esse fract' dirupt & in decasu
 defectu reparacon Idem J. dicit qd in
 idem J. C. non pmisit regulas latera
 fenestras & muros Ciment pedia' seu ali
 quam ptem inde fore fract' dirupt seu i
 decasu pro defectu repacon inde nec p
 regulas later fenestras & muros Ciment
 pedia' seu aliquam partem inde fract' dirup
 seu in decasu pro defectu reparacon inde
 ad finem pedia' termini viginti & unius
 annoꝝ reliquit modo & forma put p
 C. superius versus eum queritur Et de
 hoc pon se super piam & pedia' C. al
 ter, (Ec.)

The Plaintiff demurs to the first Plea, upon
 which the Issue is tendred and not taken,
 follows :

Demurrer.

Et pedia' C. D. filius dicit qd pedia'
 plitum pedia' J. C. quoad fractionem Con
 ventionem pedia' in relinquendo ad finem
 pedia' Termini 41 Annoꝝ pedia' domo
 super pedia' dimissis premisis p pedia' R. C.
 in vita sua post dimissionem pedia' sibi i
 pferretur fact' & duram dimissionem i
 erecta pstrata consumpta & totaliter runta
 put idem C. D. filius superius inde nar
 rabit superius in barram plitae mactat

in eodem content minus succedent in lege Covenant.
erisunt, (Ec.)

Defendant joins in Demurrer, *Vide 2 Ventr.*

reg. 124, 125.

Idem 128. The sole Question was upon this Covenant; The Defendant being obliged to build three Houses, and having built more, Whether the Covenant did not bind him to repair and deliver up that House well repair'd, as well as those which were agreed to be built? And the Court were of Opinion, That the Covenant did extend to the other House, as well as to the three which were agreed to be built; for in the last Covenant which is to deliver up well repair'd, 'tis *ita premissa, ac domos & edificia su-* *inde fore erecta*; which is general, and rather to be taken, because in the first Covenant for keeping in repair during the Term, the Houses agreed to be built, which words (agreed to be built) are left out in the last Covenant, which the Court took to be a distinct Covenant; and Judgment was given for the Plaintiff.

Et p̄dict' C. p̄ J. R. Attorn suū v̄d
& defend v̄m & injur quando, &c.
quoad fr̄ctionem Conventōnis p̄dict'
et q̄d Mesuagium p̄dictū post concess-
ionem p̄dictam p̄fat S. G. Sed inde in
ma p̄dict' fact' durant vita ipsius S.
post mortem ipsius S. usq; p̄dict' diem
perfectionis h̄is Originalis p̄dict' v̄.
et nonum diem Aprilis anno Regni
Dñi Regis nunc sexto supradicto
H h fuit

Barr.

D. f. respondit al
quelque parti-
cular, & dit
que nul part
del mease &
premisses sont
hors de repair,
& prist Issue
par quelque.
Breach.

Covenant.

Issue.

Issue.

fuit & adhuc discoopertū existit p defectu
 regulacōis inde per qđ grossum maer
 minū ejusdem Mesuagii per tempestate
 pluviales sup ille discenden p defectu
 gulacōis pđia' p vim venti sup inde a
 fūcū putridum deven & corrupt ac
 suagiu illud racōne putredinis & co
 ruptōne illius ruine minatur Idem
 dic qđ Mesuagium pđictum non disco
 pertum fuit p defectu regulacōis pđi
 contra formā & effectum Indenture p
 dīa' put pđia' H. per narracōnem sua
 pđictam superius suppon Et de hoc po
 se super pziām & pđia' H. similiter
 quoad fractōn Convencōis pđia' de
 qđ fenestre vitree (Anglice the Glaz W
 dows) totius Mesuagii pđia' contin
 sexagint & sex pedes per totum temp
 pđia' fuerunt fract' invitriat & in ma
 no decalu p defectu vitriacōis & rep
 racōis (Anglice Glazing and Leading
 eorundem ac p eo qđ sex claustra (A
 glice Iron Casements) earundem fenestra
 extra easdem fenestras capē & eb
 fuer idem C. dicit quod pđia' fenestre
 tree non fuer fract' invitriat & in deco
 p defectu vitracōis & repacōis (A
 glice Glazing and Leading) earundem
 pđia' sex claustra (Anglice Iron Ca
 ments) earundem fenestraꝝ extra easd
 fenestras capē & ebuls fuer contra fo
 mam & effectum Indentur pđia' pro
 pđia' H. per narracōnem suam pđia' su
 perius suppon Et de hoc poꝛ se sup
 pziām Et pđia' H. similiter Et quod
 fractōn Convencōis pđia' de eo quod

quatu

Covenant.

quatuor magni Canales plumbei (An-
 glice Leaden Gutters) Mesuagii p̄dia' eidē
 Mesuag' affix' cum aqueductibus (An-
 glice Spouts) eorundem per totum tem-
 pus supradictum fuer' fract' dirup' & in
 magno decasu p̄ defectu reperacōnis eo-
 rundem idem T. dic' quod p̄dia' Canales
 plumbei & aqueducti non fuer' fract' di-
 rup' & in decasu contra formam & ef-
 fectum Indentur p̄dia' p̄ut p̄dia' H. per
 Narracōnem suam p̄dia' supius suppon
 Et de hoc pon' se super p̄riand' Et p̄dia'
 similiter Et quoad fraccōnem Con-
 ditionis p̄dia' de eo qđ moxustacō gipsi
 (Anglice the Plastring) totius Mesuagii
 p̄dia' tam in interiori quam in exteriori
 parte ejusdm p̄ temp' p̄dictum fuit fract'
 dirup' & in magno decasu p̄ defectu pla-
 stracōnis inde idem T. dic' quod p̄dia'
 moxustacō gipsi (Anglice the Plastring)
 Mesuagii p̄dia' in partibus p̄dictis non
 fuer' fract' dirup' & in decasu contra for-
 mam & effectum Indenture p̄dia' p̄out
 p̄dictus H. p̄ Narracōnem suam p̄dictam
 superius suppon' Et de hoc pon' se sup
 p̄riand' & p̄dia' H. similiter Itē quoad tri-
 butum exitum istum qđ p̄dia' ab sepal' exit
 inter partes p̄dia' supius junct' p̄ceptum
 Dic' qđ Venit fac' (Et.) Vid. Vidian's
 122.

Issue.

Covenant.

Barr.

*Que il main-
tain les premis-
ses en repair
durant le Term
& issint repair
fuer' surrender
al' Plaine' al
fine de Term.*

Et p̄dict' J. B. p — Attorn suum
venit & defendit vim & injur quando
(Ec.) Et die (Necō non) Quia die q̄
ipse bene & sufficienter regulavit integuit
& argillavit om̄ia domos & edificia tunc
stans sup dimissis p̄missis & bene & suffi-
cienter manutenuit reparavit & custodivit
septimenta pomariorū gardinarū & atrio-
rum eorundem p̄missorum ac etiam bene &
sufficienter manutenuit reparavit & custodi-
vit Cancellam Ecclesie Parochialis de
D. p̄dict' de tempore in temp' & ad om̄ia
tempora quoties necesse fuit durante
p̄dicto termino septem annorum p̄ Inden-
turam p̄dictam concess' & om̄ia eadē tan-
bene & sufficienter regulat integulat argil-
lat manutene reparat & custodie in fin-
termini p̄dictorum septem annorum sic reli-
quit & sursum reddidit p̄fato G. H. scdm
vim formam & effectum Indentur p̄dict'
Et de hoc pōd se sup p̄riand (Ec.)

*Sur Count per
Leſſee versus
Leſſor quod ne
Repair.*

Barr.

*Et Issin sur le
Reparation.*

Et p̄dict' C. p — Attorn suum venit
& defendit vim & injuriam quan-
do, Ec. Et die q̄ ipse bene & competen-
ter contra ventum & pluviam Tenement-
um p̄dictum reparavit sustentabit & de-
fensibile fecit sumptib' suis p̄priis &
expens' durante anno elapso de termino
p̄dict' Et de hoc pōd se sup p̄riand &
p̄dict' W. similiter Jō (Ec.)

Plaintiff

Plaintiff shews for Breach, that H. S. Esq; having lawful Title, entred into the Tenements, and ejected the Plaintiff.

Et modo (Ec.) Accord non (Ec.) Quia protestando qd eadem D. Conventio nam Warrant pd' a tempore levacionis huius pdict' ex parte sua custodiend huc usq; bene & fideliter custodivit ptestando etiam qd H. S. pdict' tempore invasionis ipsius H. in Tenita pdict' non habuit aliquod legale jus aut titulum ad eandem Tenita cum ptineat pro p'to eadem D. dicit qd pdict' H. S. ipm J. a possessione & occupacione tenito pdict' non ejecit expulit aut amovit put pdict' J. superius inde usus cum narravit Et per (Ec.) Unde (Ec.)

Defendant by Protestation that H. S. had no Right pro placito non Ejecit, &c.

(Quer pcludi non) quia die qd pdict' H. S. ipm J. a possessione & occupacione tenito pdict' ejecit expulit & amovit modo & forma put ipse idem J. superius inde usus eam narravit Et hoc per qd inquiratur p patriam Et pdict' D. inde similiter, Ec. Ideo pcept est vie (Ec).

Repl'. Ejecit & Issue.

Verdict for the Plaintiff, and Sixty Pound Damages; but afterwards Judgment arrested by the Court, for that the Breach was not well assigned, and a Nil capiat p Willam awarded against the Plaintiff: *Vid. 2 Saund. pag. 177, 181, &c. vid. Mod. Intr. 209.*

Covenant.

Breach.

For that the Defendant did not suffer the Plaintiff to make a Drayn according to Covenant.

Defendant pleads, that he permitted the Plaintiff to make a Drayn according to Covenant, but he refused it.

ff. **E**t p̄dict' C. p̄ J. C. Attorn' sunt
venit & defendit vim & injuriam
quando, &c. Et dicit quod p̄dict' W. C.
accōnem suam p̄dict' vsus cum here non
debet Quia die quod p̄dict' passagium
dictis p̄missis p̄fat' W. dimissis p̄tinent
est scituat in p̄dict' Parochia Sed Jaco-
bi Westm p̄dict' & ducit a p̄dict' domo
p̄fat' W. ut p̄fertur dimissis usq; ad Six
Bell-Yard p̄dict' in p̄dict' Parochia de
Jacobi Westm quodq; quoddam Aqu-
ductale (Anglice a Drayn) ad aquam vacu-
am (Anglice the waste Water) a dictis
Dom in p̄dict' magnam Canalem fossam
(Anglice Main-Shoar in Six Bell-Yard) p̄-
dict' abducendū in & per passagium p̄dict'
conveniens fieri potuit & potest quod
ipsa eadem C. post concessōem dimissioni
p̄dict' p̄fat' W. ut p̄fertur facto scilicet p̄dict'
decimo sexto die Novembr anno Regi-
dicti nup Regis Jacobi quarto sup̄
dicto apud Parochiam Sed Margari-
Westm p̄dict' p̄misit & libertatem ded-
p̄fat' W. ad eius onera & custagia facere
Aquaductale in & p̄ passagium p̄dict' a
aquam vacuum a dictis Dom in p̄dict'
magnam Canalem fossam in Six Bel-
Yard p̄dict' abducendū p̄ qd idem W. A-
queductale ill in & p̄ passagium p̄dict' a
libitum suum facere potuisset si voluiss-
set hoc facere penitus recusabit Et he-
parat est verificare Unde petit iudiciū
si p̄dict' W. accōnem suā p̄dict' vsus ead-
here debeat &c.

The Plaintiff demurs generally, and the Defendant joins in Demurrer: And it was argued, that this Plea was insufficient; for when the Defendant covenanted, That the Plaintiff should be permitted to make a Drayn from the demised Premises to *Six-Bell Yard*, he was at his Election to make it through any Part of the Defendant's Ground, that lay between, tho' the Ground were built upon, (and so might be inconvenient for the Defendant) and tho' there might be another Place to make the Drayn in, and cited the Cases of Election: As where a Feoffment is made of twenty Acres of such a Wood, &c. The Defendant may take which Twenty he will in any Part of the Wood.

But the Court were rather inclined, That in this Covenant there should not be Election to make the Drayn through the Parties Stables, or Buildings, in case there were other Places proper and convenient to make the Drayn in; for every Agreement must have some reasonable Construction, that may be consistent with the latent of the Parties. But no Opinion was delivered as to this Point, because there were divers Exceptions taken to the Declaration, some of which were fatal. *Vide 2 Ventr. 272, 278.*

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Et p^odia' E, p — Atto^r suum ven
Et defendi vim & injur quando Et.
Et die qd p^odia' S. accōnem suam p^odia'
inde usus cum here seu manutencere non
debet quia die quod post sigillacōnem &
consecōnem Indenture p^odia' in Parra-
con p^odia' supius specificat & usq; festum
ded Michis Archi anno Regni Dⁿⁱ
Willi tertii nunc Regis Angl &c. septi-

Barr.
Per Perform-
ance del' Cove-
nants usque
tiel temps,
Et que donque
un Seigneur ay-
ant prior me-
lieur Title di-
mist alteri qui
ejeit D f

Covenant.

mo ipse idem C. pformabit omnes & singulas convenciones & soluciones ex parte ipsius C. pformandū scdm vni formam & effectum Indenture p̄dicta Et hoc paratū est verificare &c. Et idem C. ulterius dicit quod post sigillacionem & consecucionem Indenture p̄dicta scilicet nono die Junii anno Regni dñi Dñi Regis septimo supradicto quidam Johannes Dominus flos Baro de Watton (hens priorem & meliorem titulum ad pmissa in Indentura p̄dicta specificat & dimisit p̄fat C.) apud N. p̄dicta dimisit concessit & ad firmam tradidit p̄dicta Testa cum p̄tū in Indentura p̄dicta mencionat (inter alia) cuidam W. C. Mil hēns & tenendū Testa p̄dicta cum p̄tū p̄fat W. C. & Aliqd luts a vicefimo nono die Maii tunc ultimū p̄teritū usq; plenum finem & terminum quinquaginta annorū extunc p̄r sequendū & plenarū complendū & finiendū virtute cuius quidem dimissionis idem W. postea & post festum Sed Michis Archi p̄r in anno septimo sup̄dicta scilicet p̄mo die Nov' anno septimo su dicit apud N. in Comd p̄dicta in Testa p̄dicta cum p̄tū intravit & ipsum C. a firma sua p̄dicta ejecit expulit & amovit & ipsum C. a possessione sua inde q; iur virtute dimissionis ipsius Johis Dñi flos extratenuit & adhuc extratencit Et hoc paratū est verificare Unde p̄r iudicium si p̄dicta S. accōnem suam p̄dicta inde h̄sus cum h̄ere seu manutere debeat &c. Vid. Bro. Red. 158.

ff. Et

Covenant.

*Sur Bargain
and Sale port
per l'Heir vers
un del Cove-
nants.*

Bar.

*Confesse le De-
vise pur vie,
le remainder
en tail.*

Et p^{re}dict^{us} W. W. p . . . Altor^{um}
sua vend & defend vim & injuriā
quando, &c. Et die q^uo p^{re}dict^{us} T. B. filius
concessionem suam p^{re}dictam filius cum here
non debet quia dicit q^uo bene & verum est
q^uo p^{re}dict^{us} J. B. ante consec^utionem Inden-
tare p^{re}dict^{us} fuit seiscitus de & in p^{re}dict^{us} par-
cell^{is} terre (vocat Perryfield) ac de p^{re}dict^{us}
parva Grovett vel bosco eidem adjacent^{is}
in Indentura p^{re}dicta sup^{er}ius specificat in
D^{omi}nico suo ut de feodo & ill^{is} tenuit de
p^{re}dict^{us} R. Comite S. ut de p^{re}dict^{us} Man-
erio suo de Wimbyth-Hall in libero soca-
gio videlicet p^{er} fidelitatem tantū ac sic inde
seiscit^{us} existens p^{re}dict^{us} tertio decimo die
Januar^{is} anno Regni, (&c.) tricesimo ter-
tio apud London^{iam} in Paroch^{ia} & Warda
p^{re}dict^{us} condidit testamentū & ultimam
voluntatem suā in scriptis & p^{er} eandem
voluntatem suā voluit & legavit p^{re}dict^{us}
parcell^{is} terre vocat P. & Grovett sive
Boscu p^{re}dict^{us} p^{re}dict^{us} J. B. filio suo p^{er} ter-
mino vite ipsius J. B. filii Et q^uo post
decessum ipsius J. B. filii p^{re}dict^{us} parcell^{is}
terre vocat P. & Grovett p^{re}dict^{us} rema-
nerent p^{re}dict^{us} J. B. filio p^{re}dict^{us} J. B. filii
& hered^{ibus} masculis de corpore ipsius J.
filii J. patris legitime p^{er}ceat quodq^{ue}
p^{re}dict^{us} J. B. avus postea & ante consec-
cionem Indenture p^{re}dicta apud W. p^{re}dict^{us}
obit de tali statu suo inde seiscit^{us} quodq^{ue}
p^{re}dict^{us} J. B. pater post mortem ejusdem
J. B. avi in p^{re}dict^{us} parcell^{is} terre vocat P.
& Grovett sive Boscu p^{re}dict^{us} eidem adja-
cent^{is} intravit & fuit inde seiscit^{us} in D^{omi}nico
suo ut de libero ten^{to} p^{er} termino vite sue
virtute

*Le demise del
Tenant pur vie
a un autre.*

Covenant.

virtute legacionis pdia' remanere inde
 post ejus decessum pfat J. B. filio & he-
 redi Masculis de corpore suo creund spec-
 tand Et sic inde seisit existens idem J. B.
 pater pdia' primo die Augusti anno Reg-
 ni (sc.) tricesimo tertio supradicto dimi-
 sit pfat H. W. pdia' parcelle vocat P.
 Grobetti sive Boscum pdia' eidem adja-
 cum ptinen hend & tenend eidem H.
 Assign suis durans vita naturali ipsius
 J. B. patris Qdque pdia' H. virtute ejus-
 dem dimissionis fuit seisit de pdia' pce-
 terre vocat P. & Grobetta sive Boscu-
 pdia' eidem adjacent cum ptin in Dñie
 suo ut de libero testis p termino vite
 J. B. patris remanere inde post ejus de-
 cessum pfat J. B. filio & heredib' Ma-
 culis de corpore suo creund sic ut pfertur
 spectand Et sic inde seisit existens idem
 pdia' decimo die Augusti anno Reg (sc.)
 tricesimo tertio supradicto apud Londonia
 pdia' in parochia & warda pdia' dimi-
 pfat R. W. pdia' pcell terre vocat P.
 Grobettam sive Boscum pdia' eidem ad-
 jacent cum ptin hend & tenend eidem
 R. W. & Assign suis ab eodem decimo
 die Augusti p duobus annis integri-
 tunc primo sequend & plenarie comple-
 & finiend qdque idem R. W. virtute ejus-
 dem dimissionis in pdia' pcell terre vocat
 P. & Grobettam sive Boscum eidem ad-
 jacent cum ptin intrabit & fuit inde pos-
 sessionat Et sic inde possessionat existens
 idem R. W. pdia' primo die Septembris
 anno Regni (sc.) tricesimo tertio supra-
 dicto de pdia' pcell terre vocat P. & Gro-

*Le demiso pur
 2 Annis al un
 des Covenant-
 sors.*

hunc sive Bosco p̄dia' eidem adjacent cum Covenant.
 p̄tin' feoffabit eundem W. W. Henr' & te- Et le Feoffa-
 nent eidem W. hered' & assign' suis im- ment del Lasse
 ppetuū q̄q̄ idem W. W. virtute ejus- pur ans al Def.
 dem feoffamenti fuit seisi' de p̄dia' par- l'auter Cove-
 cell' terre vocat P. & Grovett sive Bosco nantor.
 p̄dia' eidem adjacent cum p̄tin' in Dūico Mes les Def.
 sicut ut de feodo putat dicit J. B. filius per ouster dit' que
 Parracoū suam p̄dicam' supius suppon' le dit primer
 Set idem W. W. sic inde seisi' existend' Devisee pur
 p̄dia' J. B. pater per nomen J. B. de vie esteant
 Windish in Com' Essex Peoman filii & heire, release
 hered' J. B. nup de W. p̄dia' Peoman a luy, &c. ou
 defunct' ante consecrōnem Indenture pre- garr'.
 dia' hic in Cur' plac' scit' tertio decimo
 die Octobris anno Regni (Ec.) tricesimo
 tertio supradicto apud W. p̄dia' p̄ quod-
 dam scriptū suū relaxacōis q̄ idem
 W. W. sigillo p̄dicti J. B. patris signat'
 hic in Cur' p̄fert cujus dat' eisdem die &
 anno remisit relaxavit & omnino p̄ se &
 hered' suis quiete clamavit eidem W. W.
 in plena & pacifica possessione existend' to-
 tum jus statum titulum clameum usum
 interesse & demand' quecunq̄ q̄ idem J.
 tunc habuit seu quovismodo here potuit
 de & in p̄dia' parcell' terre vocat P. &
 p̄dia' Grovetta sive Bosco eidem adjacent
 cum p̄tin' ac de & in qualibet inde p̄cell'
 ita videt' q̄ nec p̄dia' J. B. pater nec
 hered' sui nec aliquis alius sive aliqui
 alii p̄ eos vice vel nominib' eorū vel ali-
 cujus eorū aliquod jus statum titulum
 clameū usū possessionem reversionem vel
 demand' quecunq̄ de & in p̄missis aut de
 & in aliqua inde parcell' de cetero exigere
 clamare

Covenant.

*Le Des^r issint
esseant seisis,
l'Indenture
fuit fait.*

*Feoffament al
pat^r del
Plaintiffe.*

clamare seu vendicare potuissent nec de-
berent sed ab omni actione juris status
tituli claudⁱ usus & demandⁱ inde petendⁱ
sive exigendⁱ totaliter forent pelusi imper-
petuum Et p^rdictⁱ J. B. & heres sui p^rdic-
taⁱ parcelle terre vocat P. & Grobet sive
Boscum p^rdictⁱ eidem adjacendⁱ cum p^rdictⁱ
eidem W. W. heres & assignⁱ suis ad soldⁱ
& p^rp^riu^m opus & usum ipsius W. W. he-
res & assignⁱ suorum contra omnes gentes
warrantizarent & imperpetuum per idem
scriptum relaxacionis defenderent putⁱ
idem scriptum relaxacionis inter alia
plenius apparet Et idem W. W. ulte-
rius die q^u eodem W. W. de p^rdictⁱ par-
celle tere vocat P. ac de Grobetta sive
Bosco p^rdictⁱ eidem adjacendⁱ cum p^rdictⁱ in
Dⁿico suo ut de feodo in forma p^rdictⁱ sei-
sit existendⁱ Indentura p^rdicta hic in Cu-
plae p^rdicto octavo die Julii anno Reg-
ni (Ec.) tricesimo quarto suprad^o inter
p^rdictos W. W. & R. W. ex una parte &
p^rdictⁱ C. B. patrem ex altera parte in
forma p^rdictⁱ factⁱ fuit posteaq^{ue} p^rdictⁱ W. W.
de p^rdictⁱ parcelle terre vocat P. & Grobet
sive Bosco eidem adjacendⁱ cum p^rdictⁱ in
forma p^rdicta seisis existendⁱ p^rdicto secundo
die Augusti anno Regni (Ec.) tricesimo
quarto suprad^o de eadem parcelle terre
vocat P. & Grobetta sive Bosco eidem
adjacendⁱ cum p^rdictⁱ feoffavit p^rdictⁱ C. B.
patrem habendⁱ & tenendⁱ eidem C. here-
dib^{us} & assignⁱ suis imp^rpetuum virtute cu-
jus feoffamenti idem C. B. pater suus
seisit de p^rdictⁱ parcelle terre vocat P. &
Grobetta sive Bosco eidem adjacendⁱ cum

Covenant.

*Discant al
Plaintiffe.**Le Garrantie
discant sur
Tenant en tail.
Et issint le Def.
dit que il fuit
seise d'un per-
fect Estate de
Fee-simple, &
ad poiar a ven-
der.*

in Dñico suo ut de feodo Et sic inde
existit existens idem T. B. pater obiit de
statu suo inde seisit post cuius mor-
tem pdia' parcelle terre vocat P. & Gro-
veta sive Boscū eidem adjacent cum per-
tinentiis descendit p̄lat T. B. jam Quer ut filio
& heredi pdia' T. B. patris p̄ qđ idem
T. B. jam Quer in pdict' parcelle terre
vocat P. & Grovett sive Boscū pdict' ei-
dem adjacent cum p̄tin intravit & fuit &
adhuc est inde seisit in Dñico suo ut de
feodo Ipsoq; T. B. jam Quer sic inde
existit existens pdia' J. B. pater obiit post
cuius mortem Warrantia pdia' descen-
debat sup pdia' J. B. filio ut sup filio &
heredi pdia' J. B. patris sicq; idem W.
die qđ ipse pdia' tempore sigilla-
tionis & delibacionis Indenture pdia' hic
Cur p̄lat fuit & stetit seisit de & in
pdia' parcelle terre vocat P. & Groveta
sive Boscū eidem adjacent cum p̄tin de
teno certo p̄fecto & indefensibili statu feodi
simplicis absolue absq; aliqua Condi-
tione qđq; idem W. tunc habuit plenam
& legitimam potestatem & auctoritatem
mandandi concedendi bargainizandi venden-
di assurandi & alienandi pdia' parcelle
terre vocat P. & Grovett sive Boscū p̄re-
dict' eidem adjacent cum pertinentiis &
quolibet partem & parcelle p̄missor p̄
Indentur pdia' bargainizat & vendit
viro T. B. patri heredibus & assignat
huius modo & forma ut p̄antea in Inden-
tura pdia' fuit recitat & expressat secundum
formam & effectum Indenture illius Et
hic paratus est verificare Unde petit iu-
diciū

Covenant. *dictum si pdia' T. B. jam Quee accedem suam pdia' verlus cum here debeat &c.*

Vide Co. Ent. 112, 113.

Breach for Nonpayment of Rent. Defendant confesses Part, and to other Part pleads, that he assigned over before any Rent due, &c.

¶ *ET pdia' T. p. M. P. Attorn suum ben & defei d vim & injur quando, &c. Et quoad fraccon convencon pdia' in non solucon duodecim quart utr Vini Hispanici parcelle pdia' viginti & quatuor utr in Parr pdia' superius spec p uno anno finit ad decimū diem Mai anno Dñi (&c.) & vigint libe de pdia' sexagint libe parcelle que debener aretro insolut p dimid unius anni finit ad festum Annunciacoñ bte Marie Virginis anno Regni Dñi Regis nunc septimo supradicto idem T. die qđ ipse non potest dedicer accon pdia' H. inde pdia' nec qđ ipse Convencon pdia' in ea parte qđ ill duodecim quart utr Vini Hispanici a pdia' vigint libe intregit in forma qua idem H. p narracoñ suam pdia' supius suppon Et quoad fraccon Convencon pdia' in non solucon duodecim quart utr Vini Hispanici resid pdia' viginti & quatuor quart utr Vini Hispanici necnon in non solvend quadragint libe de pdia' sexagint libe resid in Parr pdia' spec idem T. die qđ pdia' H. accoñem suam pdia' inde & sus cum here non debet quia die qđ ante iidem duodecim quart utr Vini Hispanici aut aliqua parcelle inde aut eadem quadragint libe p reddit tenement pdia' cum ptia vel aliqua inde parcelle debent debet aretro seu solubili*

Covenant.

scilicet decimo quarto die Junii anno Regis
 nri Dñi Regis nunc septimo supradicti
 apud Paroch in Comd p̄dia' ipse idem C.
 concessisset & assignavit cuidam J. M. de
 London Gen statum titulum interesse &
 terminū annorū que idem C. adtunc hūc
 ventur de & in tētis p̄dia' cum p̄tin
 virtute cujus quidem assignacon idem
 J. M. postea scilicet eisdem die & anno in
 terminū p̄dia' cum p̄tin intravit & fuit
 adhuc est inde possessionat p̄ resid p̄dia'
 terminū supius in Parr p̄dia' spec & hoc
 parat est verificare Unde petit Judiciū
 p̄dia' D. accōnem suam p̄dia' inde ver
 sus eum here debeat &c.

Et p̄dia' C. dic qđ p̄litum p̄dia' C. Demurrer,
 quoad fraccon Convencon p̄dia' in non
 solneon p̄dia' duodecim quart utē Vini
 Hispanici resid p̄dia' viginti & quatuor
 quart utē Vini Hispanici necnon in non
 solvend p̄dia' 40 l. de p̄dia' 60 l. resid in
 Parr p̄dia' specificat supius in barram
 p̄litat materiaq in eod content minus
 sumten in lege existunt (&c.)

Defendant joins in Demurrer.

The sole Question was, Whether the De
 fendant ought to have given Notice to the
 Plaintiff of the Assignment.

Et adjornatur, *Vide 2 Ventr.* 228, 234.

Defendant pleads a Surrender of the Term,
 and Acceptance of the Plaintiff; *Vide antea.*

Repl', Non sursum reddidit.

Covenant.

Al Narr' in Covenant to make Account, and to pay a Moiety of the Monies received.

Def. pleads, that he disbursed the Money about Reparations, and other necessary Charges.

¶ **A** *Et non* (Ec.) Quia die qđ bene-
pit pđia' 800 l. de pñciis & emolumentis
surgen' e statu pđia' B. W. Bar Sed i-
dem A. ulterius die qđ ante recepcōnem
pđia' 800 l. scilicet 17 die Maii anno Regn-
dedi Dñi Regis nunc 18 supradicto apud
L. pđia' in Paroch' & Warda pđia' ipđ
idem A. expendit & erogavit in & circa
reparacōnem pmissorū pđia' in Articulis
pđia' supius mencōnat' & alia onera ne-
cessaria summam 800 l. & 10 l. p qđ idem A.
pđia' 800 l. sic ut pferit p ipm recept in
manibus suis retinuit erga satisfaccō-
nem pđia' 800 l. & 10 l. sic ut pferitur p
ipm expens & erogat & racōne inde non
reddidit aliquem computum eisdem R.
& C. Et hoc (Ec.) Unde (Ec.)

Quer morante in lege Et Def' jun-
in morat.

* This Plea was held ill, for the Defendants not shewing what those necessary Charges were; *Vide 1 Saund. pag. 45, 49.*

Covenant.

*Al Count sur
Charterparty
& Breach As-
signe que les
Bills d'Eschange
ne fueront paies
accordant al
Covenant.*

Bar.

*D. f. per Oyer
del' Indemure
& puis plede
quil ad depofite
& relingue les
deniers en
mains del' tierce
person per l' Or-
der & par l'
ufe del' Plaint'
accordant al
sa Covenant.*

Et p̄dicta C. III. p. — Attorn suum
venit & defendit vim & injuriam quan-
do, &c. Et petit auditum p̄dicta Inden-
tur in Parracp̄n p̄dicta sup̄ius specificat
& ei legitur in hec verba ff. This Writing
indentured, made, (&c.) qua Indentura lecta
& audita idem C. III. dicit qđ p̄dicta J. S.
accōnem suam p̄dicta inde usus eum here-
ditariū manutenere non debet quia dicit qđ
ipse idem C. III. post consecrōnem In-
denture p̄dictae & ante decessum ipsius C.
ab Anglia erga p̄dicta Insulam de Ma-
dera in Indentura p̄dicta sup̄ius specifi-
cat scilicet vicesimo quinto die Martii anno
Regni die Dñi Regis nunc sexto apud
London p̄dicta in Paroch & Warda p̄dicta
ordinem & mandat ipsius J. S. depo-
suit & relinquebat summam ducentarū
librarū sterlingū in manibus p̄facti H. B.
in Indentur p̄dicta sup̄ius nominat in
plenam solucōnem denarioꝝ qui forent
debitū p̄ vino fore delibandū virtute & ra-
cōne Indenture p̄dicta sedm̄ formam &
effectum Conventōis ipsius C. III. in ea-
pte p̄dicta facta Que quidem ducent lib̄e
tempore depositōis earundem sic ut pre-
fertur facta huc usq; remanere & adhuc
remanet in manibus p̄facti H. B. ad usum
p̄dicta J. S. videlicet apud London p̄dicta in
Parochia & Warda p̄dictis Cum hoc qđ
idem C. verificare vult qđ p̄dictum vinorū
p̄facti J. eidem C. barganizat & vendit
non excedi p̄dicta summam ducentarū li-
brarū Et hoc ipse idem C. III. pat̄ est ve-
rificare unde petit Iudiciū si p̄dicta

Covenant. J. S. accōnem suam p̄dictam inde ver-
sus ipsum T. here seu manutenere de-
beat, &c.

Breach for
Nonpayment
of Money up-
on agreement
for a Lease
under a Rent
and Covenant.
Def. pleads
*quod Testator
nichil habuit
in Tenementis.*

Et p̄dict' G. p T. M. Attorn' suū ven-
it & defendit vim & injuriam quan-
do, &c. Et dicit qđ p̄dict' E. T. J. B. &
G. M. accōnem suā p̄dictā inde vsus cum
here seu manutenere non debent quia dicit
qđ p̄dict' W. C. defunct' p̄dicto tempore
quo supponitur p̄dictam conveniētiā
fieri nec unquam postea nichil fuit in
Tenementis p̄dict' p̄ ipsum M. scriptum
agreementi p̄dict' sic ut p̄fertur dimitti
agreatum Et hoc parat est verificare
unde petit iudiciū si p̄dict' E. T. J. B.
& G. M. accōnem suā p̄dictā inde
versus cum here seu manutenere debe-
ant, &c.

To this the Plaintiff demurred : And Judge-
ment by the whole Court was given for the
Plaintiff ; for though that may be pleaded in
an Action of Debt for Rent, yet it cannot be
pleaded in Covenant for a Sum in Gross ; be-
sides, that the Agreement does not necessarily
import, that the Lease should be made by the
Plaintiff. It may be understood that it was
agreed, he should procure a Lease for the De-
fendant. *Vide 2 Ventr. pag. 99.*

Breach.
*Assign' pro ven-
to uen' dena-
riorum.*
Bar.
*2d' D. f. s. l. v. i.
denaries.*

Et p̄dict' S. p (et.) Quando (et.) &
prestando quod nulla talis concessio
sive dimissio dictarū dictarū in Parte
p̄dict' superius specificat unquam translat'
fuit qualis in Articulis p̄dict' fore trans-
lat' mentionatur p̄ placito idem S. dicit
quod

quod ipse ad sigillacoⁿ articulo^r p^re-
dicto^r solvit p^rfat^r C. p^rdictam summam
trigint lib^raz sedm^o formam & effectum
Articulo^r ille videlt apud London^o p^rdict^r
in Paroch^o & Warda p^rdict^r Et hoc pat^r est
verificare, &c. Unde, &c.

(Precludi non, &c.) Quia die q^d idem
S. ad sigillacoⁿ articulo^r p^rdict^r non sol-
vit p^rfat^r C. p^rdictam summam trigint^r
lib^raz sedm^o formam & effectum Artic-
ulo^r ille modo & forma put^r p^rdict^r S. su-
perius p^rlitando allegabit Et hoc petit
quod inquiratur p^r p^riam Et p^rdict^r S.
similiter &c. I^o v^o inde Iur^r coram
D^{no} Rege apud Westmon^o die Veneris
p^r post Crastin^o Sed Trin^o Et qui nec,
&c. Ad recogn^o &c. Quia tam &c. Idem
dies dat^r est partibus p^rdictis ibm &c.

Repl^r.

Issue.

E^t p^rdict^r A. p Ven^o &c. Et die
q^d p^rdict^r C. non requisivit ipsum A.
ad sigilland^o & ut factum suum deliband^o
p^rdict^r C. p^rdict^r scriptum relaxacoⁿis pro
ultio^ri a^ssurancia eli p^rdict^r cum pertin^o
p^rdict^r C. fiend^o put^r p^rdict^r C. per narracoⁿ
suam p^rdict^r superius suppon^o Et de hoc
p^ro d^r se sup^r p^riam (&c.)

Ad Narr^r super
Convenc^r ad
fac^r ulterior^r
a^ssuranc^r super
requisicon^r.

Bar.

Per non requi-
sivit.

Note, There are many Bars relating to
Lands, and the Covenants in Indentures
and Articles, which properly come under
the Title of Debt, by reason they are
pleaded to Conditions of Bonds, &c.

Covenant.

As Bar { to Conditions for assuring of
Lands.
for quiet Enjoyment.
to be free from Incumbrances.
for Non-payment of Rent.
for not repairing Houses, and
for not doing other Things rela-
ting to Lands, and
by Conditions and Covenants
performed generally, &c.

Therefore we will treat of them under the Title of Debt, and only add two or three such Precedents here for Example's sake.

Note, That the whole Head of Covenant and Conditions to perform Covenants, are recapitulated and fully answered to all manner of Precedents, &c. in the Beginning of the 4th Part of *Instructor Clericalis*, to which I refer you; so that 'tis needless to add any Thing more here by way of Reference on that Subject.

*Bar' per per-
formans del
Condition.*

*Priſt a faire
lui ſure del
terre, &c. ſil
fuit require.*

Et p̄dict' G. per, &c. Attoꝝd suum
ven' (&c.) quando, (&c.) Et petit
auditum scripti p̄dict' & ei legis-
tur, &c. petit eciam auditu' Condico-
eiusdem scripti & ei legitur in hec vba
Condictio (&c.) Quibus lectis & auditis
idem G. dicit qđ p̄dict' R. actionem suam
p̄dict' vltus eum here non debet quia dicit
qđ p̄dict' G. p̄dicto tempore convenconis
scripti p̄dict' usq; p̄dict' Quinden' Pasche
semper parat' fuit ad faciend' p̄dict' R.
Hered' & Aliqñ suos secur' de omnibus
terris

terris & tenentis p̄dicta' p̄ visum Consilii Covenant.
 p̄dicta' R. ad sumptus ejusdem R. si idem
 G. p̄ plac̄ R. vel Assignos suos ad hoc fuis-
 set requisit' scdm̄ formam Condicion' p̄dicta'
 & etiam idem G. omnia cartas & muni- *Il deliro' les*
 menta terras & tenenta p̄dicta' tangend' que *faits.*
 in manib' suis tempore confectio' scrip̄
 p̄dicta' extiterint eidem R. apud S. p̄dicta'
 die (&c.) Anno (&c.) deliberabit scdm̄ for-
 mam & effectum ejusdem Condicion' Et
 hoc parat' est verificare unde petit Judi-
 cium si p̄dicta' R. accōnem suam p̄dicta' usus
 eum here debeat &c.

Et p̄dicta' R. die qđ ip̄e p̄ aliqua pal-
 legat' ab accōne sua p̄dicta' habend' p̄cludi
 non debet quia p̄testando qđ p̄dicta' G. non
 deliberabit eidem R. cartas & munimenta
 nec aliquem vel aliquod inde seu eorum-
 dū p̄ plito die qđ ip̄e idem R. die Mar-
 tis pr' post. Patal' Und' Anno (&c.) apud
 S. in Com' p̄dicta' requisivit p̄dicta' G. qđ
 veniret usq; D. coram J. B. uno Justic
 Und' Regis de Banco ad cognicōnem co-
 ram eodem J. B. de tenentis p̄dicta' G. p̄
 visum Consilii ipsius R. in forma juris
 ut finis inde ad usum ipsius R. & Hered'
 suoz levare potuit faciend' & obtulit ei-
 dem G. sex solidos & octo denar' p̄ sum-
 ptibus suis in itinere illo faciend' & idem
 G. ibm hoc facere recusabit contra for-
 mam Condicionis p̄dicta' Et hoc parat' est
 verificare &c. Unde petit judicium & de-
 bitū suū p̄dicta' una cum dampnis suis
 accōne detencion' debi illius sibi adjudi-
 cari &c.

Repl'.
Protestando.

*Il require luy
 a lever fine &
 il refuse.*

*Il obtulis 6 s.
 8 d. pro sum-
 ptibus in itinere.*

Covenant.

*Il ne offer le Mo-
ney pur les Coſts
& Iſſue ſur oco.*

Et p̄dict' G. non cognoſcend' aliqua p̄
p̄dict' H. ſupius allegat dicit quod
idem H. non obtulit p̄ſar G. p̄dict' ſer
ſolidū & octo denar p̄ ſumptibus ſuis in
itinere ſuo a p̄dict' Villa de S. uſq; D.
faciend' put p̄dict' H. ſupius allegabit
Et de hoc pōd ſe ſup p̄dict' Et p̄dict' H.
ſilter, &c. Iſo (&c.)

*Qd' Quer' quie-
te & pacifice
habuer' & ga-
viſi fuer' boſc'
maherem' &
arbores abſque
interruption'
Def. ſecundum
Condition', &c.*

Et p̄dict' D. p̄ &c. Attorū ſuū vend' &
defend' vim & injur quando, &c. Et
p̄ſe auditum ſcripti p̄dict' & ei legitur
p̄ſe etiam Condition' ejusdem ſcripti & ei
legitur in hec verba, The Condition, (&c.)
Quibus lectis & audit' idem D. dic' qd'
p̄dict' W. G. & J. accōnem ſuam p̄dict'
inde ſiſus eum here ſeu manutenere non
debent quia dic' qd' p̄dict' W. G. & J. a
tempore confeccō ſcripti p̄dict' uſq; diem
exhibitiōis Ville p̄dict' W. G. & J.
p̄dict' pacifice & quiete huerunt ceperunt
poſſiderunt & gaviſi fuerunt vel here ca-
pere poſſidere & gaudere potuerunt ad
eorū v̄pria uſus beneficia & opus (An-
glice behoofs) omnia p̄dicta barganizat
boſcum maheremium & arbores ſcōm
veram intencōnem (Anglice Intent) &
propoſitum p̄dict' ſcripti agreeamenti &
p̄dict' ſcripti assignacōis in Conditione
p̄dict' mencōnat' Qd' ip̄s p̄dict' D. ſeu
p̄dict' J. H. in Conditione p̄dict' nominat'
ſeu eorū alī vel eorū ſeu alterius eorū alī
ſign' a tempore confeccō ſcripti p̄dict'
uſq; diem exhibitiōis ville p̄dict' non
impediverunt denegaverunt moleſtave-
runt

runt disturbaverunt interturbaverunt Covenant.
 (Anglice interrupted) egerer (Anglice e-
 jected) expuler sive contradixer seu ali-
 qua alia psona seu alioq alie psonae que-
 cunq licite impediverunt denegaverunt
 molestaverunt desturbaverunt intertur-
 baverunt egerer expuler seu contradixer
 pdiaos W. G. & J. seu eor aliquem pa-
 rifice & quiete habere capere possidere &
 gaudere ad eor ppria usus beneficia &
 opus (Anglice behoofs) pdia' barganizat
 boscum maheremid & arbores scdm ve-
 ram intenconem & ppositum scripti a-
 greamenti & scripti assignaconis pdia'
 Et hoc parat est verificare unde per judi-
 cium si, (Ec.)

¶ **E**t modo ad hunc diem scist diem
 Veneris pr' post Crastin Scd
 Trinitatis isto eodem Termino usq qnd
 diem pdia' J. f. huit licenciam ad Bil-
 lam pdia' interloquendi & tunc ad re-
 spondi &c. coram Dho Rege apud Westm
 ben tam pdia' J. H. p Attoz suum pre-
 dictum quam pdia' J. f. p R. S. Attoz
 suum Et idem J. f. defend vim & in-
 iur quando, &c. Et petit auditum scripti
 Obligatorii pdia' & ei legitur, &c. petit
 etiam auditum Indozamenti ejusdem
 scripti Et ei legitur in hec verba, ff. The
 Condition, (Ec. *) Quibus lectis & audi-
 tis idem J. f. dicit qd pdia' J. H. ac-
 tionem suam pdiatam inde usus eum here
 seu manutenere non debet Quia die qd
 p Indenturam pdia' in Condicone pdia'
 upius spec (fac' apud W. in Com pdia'

Defend' prays
 Oyer of the
 Condition
 which is to
 perform Co-
 venants con-
 tained in an
 Indenture.

Bar.

Note, Inden-
 ture must be
 set forth by
 Def. on Oyer.
 1 Keb. 6. 415,
 513.
 Vid Moo. 3.
 pl' 9.
 Recital del In-
 denture.

Covenant.

vicesimo die Martii anno Regni die Unde
 Regis nunc septimo supradicti inter presen-
 dictum J. F. p nomen J. F. de W. in
 Com B. Gen ex una parte & p J. H.
 p nomen J. H. de C. in Com pdicti, Free-
 Mason, ex altera parte cujus Indenture
 alteram partem Sigillo ipsius J. H. sig-
 gillat gerend dat eisdem die & anno idem
 J. F. [p & in cons qd pdicti J. H. Execu-
 cutor vel Assign sui infra quinqz annos
 prim & immediate evenien & sequen dat
 Indenture pdicti de novo faceret erigeret
 edificaret & strueret vel causaret de novo
 fieri erigi edificari & strui unam bonam
 & sufficien Domum molendinae sive frui-
 mental molendinum fore molendinum
 aquaticum in & sup quodam fundo sive
 pastur pdicti J. F. in W. pdicti voc bel
 cogn per nomen de C. in tali loco pdicti
 fundi qual ante sigillaconem pdicti In-
 dentur agreeae fuit inter pdictum J. F.
 & pdicti J. H. eundem J. H. etiam ad fa-
 ciend omnes necessar aquecursus januas
 aquar rupes & liagn & singul (voc Slu-
 ces) & omnia al necessar tangen & con-
 cernen necessar conveianc aque eidem
 molendino vel molendinis (si contigeret
 eum edificare plur quam unum) super
 & ad eorum pria custia & onera in om-
 nibus sufficien & competen (maheremio
 ulmorum solummodo except) qd semper
 esset invene plac & deliberat plac J. H.
 Hered Executor vel Assign suis p plac
 J. F. Hered Executor vel Assign suos
 infra Domum in W. pdi sup raconabil
 requisicon inde fiend plac J. F. Hered
 vel

Assign] suis demisset concessisset & Covenant.
 firmam tradidisset & p Indentur pre-
 dimisit concessit & ad firmam tradi-
 plac J. H. omnem ill pdictū fundū
 pastur jacent & existent in M. pdict
 & nominal p nomen de C. cum om-
 plicuis commoditatibus & advan-
 agiis quecunq; forent pvenient crescent
 regent renobant & contingent de in & sup
 riam fundum & pastur & quamlibet
 part & parcelle inde (umbrosis virgultis
 tunc crescent & existent sup pdict terre tan-
 commododo except & reservat plac J. F.
 hered & Assign) que terre & pastur & pre-
 miss fuer ad conferent Indentur pdict
 in tenura vel occupacion cujusdam C. R.
 de S. Mire vel Assign suorum Et etiam
 demisset concessisset & ad firmam tradi-
 disset Et p Indentur ill dimisit concess-
 it & ad firmam tradidit & posuit plac
 J. H. omnia pdictum molendinum & mo-
 lentina que forent de novo fieri erigi edi-
 ficiari & strui ut pdictum est & omnes
 domos edificia & structur q; forent edi-
 ficiari & strui ad & cum eisdem & omnia
 al plicua commoditat & advantages q; fo-
 rent & possent pvenire crescere & fieri de
 pdict molendino vel molendinis aque
 cursus eisdem spectant & pten videlicet a
 loco tunc vocat D. usq; finem pdict terre
 una cum libero ingressu egressu & re-
 gressu in ad & a pdict terre & pastur &
 molendinum & molendinis pdict & om-
 nibus aque cursus que eis ptennerent
 plac J. H. & famulis & Assign suis
 cum omnibus cariagis suis que forent
 cum

*Demise de Mo-
lyn orve tous
profits & ad-
vantages, &c.*

Covenant.

cum equis carucis vel bigis obserb
usual vias ducen ad p̄lat̄ terr̄ voc
habendi & tenendi p̄dict̄ terr̄ vel past
voc̄ C. & molendinū vel molendina
perinde edificari & strui ut p̄dictū est
omnia al̄ p̄missa p̄dict̄ & quamlibet pa
tem & parcelle inde, except̄ p̄cept̄ p̄
J. H. Execut̄ Administrat̄ & Magnū su
a festo Annunciat̄onis beate Marie Vir
ginis primū sequenū post dat̄ Indent
p̄dict̄ usque finem & terminū viginti
unius annorū extunc primū & imedia
sequenū plenar̄ complenū & finiendū re
dendū & solvendū inde annuatim duran
to p̄dict̄ Termino p̄lat̄ J. f. heredi
assignū suis sumam trigint̄ librarū bo
& legtis monete Anglie ad duos term
nos vel festi Anni maxime usual̄ vide
ad festa Scd Michis Archi & Annun
ciat̄onis beate Marie Virginis p̄ equi
les por̄iones Et si contingeret p̄dict̄ An
nuat̄ reddit̄ trigint̄ librarū aretro so
lū in parte vel in toto ultra vel p̄
aliquem terminū vel festū solut̄ionis in
p̄dict̄ in quo solvi debeat p̄ spatium unius
mensis & tunc minime solut̄ existendū
gitime requisit̄ & demandū & nullū sum
enū district̄ habendū nec inveniendū in
sup̄ p̄missis vel aliquam partem vel pa
cell̄ inde qđ tunc & quolibet die tunc d
inceps bene liceret p̄lat̄ J. f. Heredi
Assignū suis in omnia p̄dict̄ terr̄ & pastu
& p̄miss̄ p̄antea per Indentur dimiss̄
concess̄ & quamlibet partem & parcel
inde totaliter reintrare & ill̄ rehabe
retinere repollidere & gaudere ut in ejus
vel

eorum priorum Stat Et pdict' J. H. Executor & Assign' suos inde pe-
 nus expuli ejici & amoveri pdict' In-
 ventur vel aliquo in eadem content in
 contrariū inde in aliquo non obstan Et
 pdict' J. H. convenisset promississet & con-
 fessisset p se Executor Administrator &
 Assign' suis ad & cum pdict' J. F. He-
 & Assign' suis p Indentur pdictam
 modo & forma sequen videt qd ipse idem
 Executor vel Assign' sui infra quin-
 annos primū sequen post dat Inden-
 tur pdict' de novo faceret erigeret edifi-
 casset & strueret vel causaret de novo fieri
 edificari erigi & strui in pdict' terr' hoc
 sup ejus & eorum ppe custag & onera
 bonū & sufficien domū molendinar
 frumentar molendinū & faceret suffi-
 & necessar aque cursus ad agendū
 molendinū vel molendina ill in loco &
 in usum illum appunctuar (ut pre-
 dict' est) Et etiam ex ejus & eorum ppe
 custag bene & sufficien repararent sup-
 portarent sustentarent manutenerent &
 custodirent tenabil in omni genere re-
 parationis pdict' molendinū vel molen-
 dina & omnes domos edificia & structur
 ne forent ad ill edificari & strui & om-
 nes januas aquarum rupes stagnū & sin-
 gule vocat Sluces que ullo modo specta-
 re vel ptinerent pdict' molendinū vel
 molendinis quando & toties quoties o-
 mnibus postularet duran toto pdict' Ter-
 mino Et etiam ex eorum sumptibus cu-
 sag & oneribus ad faciendū custodiendū &
 reparandū omnes sepes fossa & clausa
 pdict'

Covenant.

p̄dia' terre vel pastur toties quoties
 cesse foret duram̄ toto p̄dia' Termino
 p̄dia' molendinū vel molendina & om̄
 al p̄missa p̄dia' & quamlibet partem
 parcelle inde existē in & p̄ omnia sic b̄
 & sufficienter reparat sup̄portat susten
 manutent & custodit tenabil in om̄
 mod̄ reparacionib' in fine p̄dia' Termi
 relinqueret p̄fat J. f. Hered & Assign
 suis Et insuper qđ p̄dia' J. H. Execu
 tor & Assign sui & eorum quilibet e
 stens tenen p̄missorum annuatim dur
 toto p̄dia' Termino postea qđ p̄dia' m
 lendinū conficitur & edificatur molend
 narent libere absq; tale omne tale fu
 ment' cuiusvis generis qual p̄dia' J.
 Hered vel Assign sui annuatim expē
 derent p̄ ejus vel eorum necessar usu
 Hospitalitat Manerio suo de W. p̄
 dia' & non alibi Deniq; qđ si p̄fat J.
 in p̄p̄e p̄sona sua ad aliquod tempus i
 posterū postquam p̄dia' molendinū
 molendina forent fact' & edificat agre
 ret cum p̄dia' J. H. Executor vel Assign
 suis p̄ eisdem qđ tunc ipse idem J.
 Executor vel Assign sui sup tali agre
 ment & composicionē sic habit & fac' de
 beraret p̄dia' molendinū vel molendi
 p̄fat J. f. ad ejus p̄p̄e usum & op̄
 (aliquo p̄antea die in contrar non o
 stan) Et similiter qđ p̄dia' J. f. Hered
 Assign sui ad omnia tempora necess
 duram̄ p̄dia' termino herent libere i
 gressum egressum & regressum in p̄dia
 terr' vel pastur hoc C. ille vel illi sem
 indempnū conservand p̄dia' J. H. Execu
 tor

et Assigni suos ab omni periculo et
 dampno que evenirent contingere per eos-
 dem ingressus egressus et regressus Et predicta
 J. f. convenisset concessisset promississet et
 creasset per se Heredem Executorem et Admini-
 stratorem suis et eorum quolibet ad et cum
 J. H. Executor Administratorem et As-
 signum et eorum quolibet per Indenturam predictam
 modo et forma sequenti videlicet quod ipse idem
 J. f. Heredem et Assignum sui ad omnia tem-
 pora et tempora imposterum duram totum
 predictum terminum super qualibet rationabili
 requisitione ei vel eis facta per prefatum J. H.
 Executorem vel Assignum preberet et delibera-
 ret vel preberi et deliberari causaret prefatum
 J. H. Executor et Assignum suis infra do-
 mum de W. predictam sufficientem et competentem
 materiam ex ulmis tam per tanta nova
 edificacionem quam predictam J. H. Executor
 vel Assignum placerent edificare et erigere
 et super predictam terram et pasturam quam etiam per
 necessarium reparacionem predictam structure Acetiam
 allocaret et deliberaret prefatum J. H. Exe-
 cutorem et Assignum ad omnia tempora neces-
 saria infra domum de W. predictam super rationa-
 bilis requisitionem inde factam sufficientem et
 competentem ramos spinosas (Anglican Hedge-
 note) per confectorem custodire et reparacionem
 expium et clausum predictam terram et pasturam du-
 rantem totum predictum terminum aliquo superius
 dicto non obstando Et denique quod predictam J. f.
 Heredem et Assignum et quilibet eorum totas
 predictam terram et pasturam pantea per Indenturam
 predictam dimisit et concessit et quamlibet par-
 tem et parcelle inde prefatum J. H. Executorem
 Administratorem et Assignum suis et eorum cui-
 libet

Covenant.

libet p annual reddit' trigint' libr' p'di
 & sub & secundū al' convenções p'ant
 recitat' contra omnes gentes quascunq'
 habentes clamantes vel p'tendentes h
 bere aliquod ius titulum vel interesse
 ab vel subter p'dcū J. f. vel hered' su
 warrantizarent & defenderent durand'
 to p'dia' termino viginti & unius ann
 rum p' Indentur' p'dia' put' p' Indentur'
 ille liquet Et idem J. f. dic' qd' ipse be
 & fideliter p'formabit omnia & singul
 convenções concession' & articul' in J
 dentur' specificat' ex parte sua observan
 Et hoc parat' est verificare Unde pet
 iudicium si p'dia' J. H. acconem suam
 p'dcam' inde v'sus eum here seu manut
 nere debeat, (Et.)

Repl'.

*Que il ne puit
 enjoyer le molyn
 ove tous profits
 & advantages
 & monstre
 com'nt.*

Et p'dia' J. H. dicit qd' ipse p' aliqu
 p' p'dia' J. f. supius p'litando allega
 ab accone sua p'dia' v'sus ipsum J. f.
 habend' p'cludi non debet Quia p'testan
 do qd' p'dia' J. f. non p'formabit perim
 plevit seu custodivit aliquam convenco
 nem concessionem Articulu' sive agree
 ment' in Indentur' p'dia' ex parte p'dia
 J. f. observand' p'formand' seu perim
 plend' p' p'lito tamen idem J. H. dicit qd'
 post erecconem p'dia' molendini ac facti
 onem aque cursus ad impingend' (An
 gllice to drive) molendinu' p'dia' secundū
 convenções & agreement' in Indentura
 p'dco content' p' que aqua a tempore con
 ferecon' aque cursus usa fuit decurrere ad
 p'dia' molendinu' & idem molendinu' im
 pingere (Anglice to drive) p'dia' J. f.
 postea scilicet vicesimo die Septembris

Anno

mo (Ec.) supradico causabit & pcura
 p dia' aquam sibe aque cursum ad mo-
 din p dia' ut p dia' est decurrent cum
 buldm instrumentis (hoc Flakes, Hur-
 s) & celsitibus (Anglice Turfs) ob-
 pari p qd idem J. H. omnia p ficia
 moditat & advantag que forent & pos-
 pbenire crescere & fieri de p dia' mo-
 dino & aque cursu eidem spectan &
 men juxta concession & dimission pre-
 eidem J. H. p p dia' J. f. fact' ha-
 re & gaudere non potuit Et hoc (Ec.)
 de (Ec.)

Et p dia' J. H. dicit qd ipse non causa-
 aque cursum p dia' ad molendinu p
 current obstupari modo & forma put
 dia' J. H. supius replicando allegabit
 de hoc pon se sup priam Et p dia' J. H.
 ter (Ec) Jo ven inde Jur' coram
 dio Rege apud Westm die Martis pr'
 tres Septimanas Sed Trinitatis
 qui nec (Ec.) Ad recogn (Ec.) Quia
 am (Ec.) Idem dies dat est partibus
 dia' ibm (Ec.)

*Issue sur le
 Esopper del
 Watercourse.*

Et p dia' G. H. p — Attor' suu ven
 & defend vim & injuriam quan-
 Ec. Et ptestando qd p dia' Navis du-
 ante p dia' viagio non fuit fortis & sana
 formam & effectum Indenture p
 plito die qd p dia' Hispanici seiplos
 atra p dia' Navem hostiliter non ten-
 runt nec vi & armis eandem Navem
 am vehementer aggressi fuerunt quod
 adem Navis quietum commerci ad In-
 lam p dia' p tempus p dia' here non
 potuit

Bar.

*Ad actionem
 sur Charter-
 party pro por-
 torio Navis pro-
 testando quod
 Navis durante
 viagio non fuit
 sana pro placito
 quod Hispanici
 s ipsos contra
 Navem non
 tenderant, &c.*

Covenant.

libet p annual reddit' trigint' libr' pda
 & sub & secundū al' convenções panti
 recitat' contra omnes gentes quascunq'
 habentes clamantes vel p'tendentes h
 bere aliquod ius titulum vel interesse
 ab vel subter p'dcū J. F. vel heredi su
 warrantizarent & defenderent durand
 to p'dia' termino viginti & unius ann
 rum p' Indentur' p'dia' put' p' Indentur'
 ill' liquet Et idem J. F. dic' qd' ipse be
 & fideliter p'formabit omnia & singula
 convenções concessionē & articul' in Indentur'
 specificat' ex parte sua observand'
 Et hoc parat' est verificare Unde pet
 iudicium si p'dia' J. H. actionem suā
 p'dcām inde v'sus eum here seu manut
 nere debeat, (Et.)

Repl'.

Que il ne puit
 enjoyer le molyn
 ove tous profits
 & advantages
 & monstre
 comment.

Et p'dia' J. H. dicit qd' ipse p' aliqu
 p' p'dia' J. F. supius p'sitando allegat'
 ab actione sua p'dia' v'sus ipsum J. F.
 habendū p'cludi non debet Quia p'testat'
 do qd' p'dia' J. F. non p'formabit perim
 plevit seu custodivit aliquam conven
 nem concessionem Articulū sive agree
 ment' in Indentur' p'dia' ex parte p'dia'
 J. F. observandū p'formandū seu perim
 plendū p' p'tito tamen idem J. H. dicit qd'
 post erectionem p'dia' molendini ac factū
 v'uem aque cursus ad impingendū (An
 gllice to drive) molendinū p'dia' secundū
 convenções & agreement' in Indentur'
 p'dcō content' p' que aqua a tempore con
 ferendū aque cursus usa fuit decurrere ad
 p'dia' molendinū & idem molendinū im
 pingere (Anglice to drive) p'dia' J. F.
 postea scilicet vicesimo die Septembris

Anno

mo (Ec.) supradico causabit & pcura: Covenant.

pdia' aquam sive aque cursum ad mo-
lind pdia' ut pdia' est decurrent cum
busdm instrumentis (voc Flakes, Hur-
) & celspitibus (Anglice Turfs) ob-
pari p qd idem J. H. omnia pficua
moditat & advantag que forent & pos-
t pbenire crescere & fieri de pdia' mo-
lino & aque cursu eidem spectand &
men juxta concession & dimission pre-
e eidem J. H. p pdia' J. F. fact' ha-
& gaudere non potuit Et hoc (Ec.)
de (Ec.)

Et pdia' J. H. dicit qd ipse non causa-
aque cursum pdia' ad molendinu pd
current obstupari modo & forma put
it' J. H. supius replicando allegabit
de hoc pon se sup priam Et pd J. H.
ter (Ec) Jo ven inde Jur' coram
no Rege apud Westm die Martis pr'
tres Septimanas Scd Trinitatis
qui nec (Ec.) Ad recogn (Ec.) Quia
m (Ec.) Idem dies dat est partibus
dia' ibm (Ec.)

*Issue sur le
Esopper del
Watercourse.*

Et pdia' G. H. p — Attor' suu ven
& defend vim & injuriam quan-
Ec. Et ptestando qd pdia' Navis du-
ante pdia' viagio non fuit fortis & sana
formam & effectum Indenture pd
plito die qd pdia' Hispanici seiplos
contra pdia' Navem hostiliter non ten-
unt nec vi & armis eandem Navem
m vehementer aggressi fuerunt quod
idem Navis quietum commerciu ad In-
lam pdia' p tempus pdia' here non
potuit

Bar.

*Ad actionem
sur Charter-
party pro por-
torio Navis pro-
testando quod
Navis durante
viagio non fuit
sana pro placito
quod Hispanici
s ipsos contra
Navem non
tenderunt, &c.*

Covenant.

potuit scdm forma & effectum Indentum
pout pdia' R. p narracionem suam p
dictam supius supponit Et de hoc po
se super Patriam Et pdia' R. filio
Jo (Ec.)

I Bro. 127.

*Ad actionem
sur Charter-
party d' Af-
freightment.*

Barr.

*Qd' Navis sup
diem Limitat'
non parat' fuit
navigare, &c.
nec decessit, &c.
nec processit, &c.*

A Cto non Ec. Quia dic qd' Navis p
dia' (vocat le Sarah of Southampt
pdia' decimo quinto die Octobris in Pa
racone pdia' supius menconat apud Po
tum de Southampt pdia' non par
fuit navigare abinde usq' Rivum (v
James River in Virginia) nec decessit abin
de intenso suo viagio directe ad pdi
Rivum nec in eodem viagio processit
cum ea celeritate qua potuisset pro
ventus & aer deserviebant scdm forma
& effectum Charte pte pdia' Et h
pat fuit verificare Unde (Ec.)

Cl. Ass. 309, &c.

*De conventione
fraet' sur Arti-
cul' agreementi
concernen' con-
ditionem dua-
rum Navium.
Def. dic' qd'
ipse parat' fuit
ad computand'
cum Quer' &
travers qd'
Quer' parat'
fuit ad compu-
tand' cum ipso.*

A Cto non (Ec.) Quia dic qd' ipd id
R. post pdia' reditum pdia' Navi
a pdia' viagio ad pdia' Portum Londo
usq' diem impetraconis hujus Bil
scit (tali die & anno) parat fuit & a
huc parat existit apud London pdia'
Parochia & Warda pdia' ad computan
iuste & vere insimul cum pfae T. tange
expens pdi oneris (Anglice the Freight
& provisionis pdia' Naviu) & omnium
al' expens tanged viag pdia' sed idd
ad computand' cum pfae R. concerne
expens oneris pdia' & provisionis pdi
Naviu & omnium al' expens tanged
viag

Ita qd p̄dict' penitus recusavit & adhuc Covenant.

Abſq; hoc qd p̄dict' C. poſt p̄dict' p̄bitū p̄dict' Naviū a p̄dict' viagio p̄at' ut ad computand' infimul cum p̄lat' R. rangan' expenſ' p̄dict' oneris (Anglice Freight) & provisionis p̄dict' Naviū & omnium al' expenſ' rangan' via; p̄dict' modo & forma p̄out p̄dict' C. ſuperius ſuſus cum querit Et hoc (Ec.) Unde (Ec.) See *Vidian* 138.

See more of Covenant at the Beginning of the 4th Part of *Inſtructor Clericalis*.

Some resolved CASES as to Special Pleadings in Covenant.

IN Covenant againſt an Assignee for not repairing a Houſe: Defendant pleaded in Bar, an Accord between him and the Plainriff, and Execution of it in Satisfaction of the Reparations. It was objected, That neither Accord, nor Accord with Satisfaction, is a Bar by Accord, when an Action is founded upon a Deed, because Matter *en fait* cannot be avoided by Matter in *Pais*; ſo when an Action is in the Realty, or mix'd with the Realty, Accord with Satisfaction is no Plea, and is not a Bar for the Perſonalty, but it was adjudged that the Plea was good: And a Difference was taken, where a Duty accrues by a Deed in Certainty, as by Covenant, Bill or Obligation to pay a Sum of Money; there because it takes its Eſſence by Writing, it ought to be avoided by Matter of Writing: But when no certain Duty accrueſh by the Deed, but a Default ſubſequent

Breach for not repairing.

Bar by Accord.

Covenant. gives only Damages, there Accord with Satisfaction is a good Plea; 6 Co. *Blake's Case*.

Vide 2 Keb. pag. 51. The Court held that an Accord is a good Plea to a Covenant to pay a Sum certain, or an Obligation when joined with other Things. But Concord after the Deed, cannot be a Bar to such Covenants, as were not broken; 2 *Rolls* 187, 188.

Def. pleads
Payment af-
ter the Day,
and ill.

Moved for a Repleader in an Action of Covenant to perform Articles and Payment of Money, whereto the Defendant had pleaded Payment of the Money after the Day, which the Plaintiff accepted; and, because it was not pleaded by way of Accord and Satisfaction of the Covenant wherein Damages also are recovered, said to be ill. And this Issue being insufficient, and found for the Defendant, it is not aided by the Statute of *Jeofails*. And by *Twisden*, Payment pleaded to a single Bill, if found for the Plaintiff, he shall have Judgment; if for the Defendant, there shall be a Repleader, *sed adjournatur*; 1 *Keb.* 210.

Vide 3 Cr. 455.
pl. 2.

Goldsb. 106.
pl. 11.

But that the
House was
burnt by
Casualty.

In Covenant brought against a Lessee for Years, for not keeping the House in repair. The Defendant pleaded in Bar, that the House was burnt by Casualty: It was holden to be no good Plea in Bar; for that a Lessee that covenanteth to repair, ought to do it, be his House burnt by Negligence, or by any other Means. *Styles* 162. *Compton* and *Allen's Case*.

Not good.

House repair-
ed in conve-
nient Time.

Defendant pleads the House was burnt, but repaired in convenient Time before Action brought. The Plaintiff demurred, because not shewn by whom, not by the Defendant himself: But the Court said, That being repaired, tho' by a Stranger, was a good Plea; but in

Truth the Plaintiff had repaired it, and be-
 cause 'twas a hard Case, the Court suffered
 him to wave his Demurrer, and take Issue not
 repaired in convenient Time, the House being
 uncovered; 2 *Keb.* 535.

Vide 3 *Keb.* 40. The like Plea and Demurrer
 because the Time not put in certain, sed non
 allocatur, the first of *July* sufficient.

2dly. Because not said who repaired, and p
 that the House being rebuilt by the Plaintiff
 himself, and the Defendant's Executors and
 Administrators bound to repair it, the Plea is
 ill, and must shew who repaired it; but if the
 Plaintiff built it, this is no Excuse; and Judg-
 ment for the Plaintiff.

If a Lessee for Years covenanteth to leave Bar by Tem
 Wood in as good Plight as it was at the Time pest,
 of the Lease, and afterwards the Trees are
 over-turned by a Tempest, he may plead this
 Matter in Bar, and it shall discharge him of his
 Covenant, quia impotentia excusat Re- and good.
 gem; 1 *Co. Shelley's Case*, 40 *Ed.* 3. 6.

The Covenant was upon a Charter-party, Covenant on
 That in consideration of a certain Sum of Mo. Charter-par-
 ty they agreed to be paid to the Defendant for
 Freight of such a Ship, that he should make
 such a Voyage, and bear all Losses and Dama-
 ges which should befall the Ship or Merchandi-
 ses in her, excepting only Perils of the Sea: And
 the Plaintiff declared that the Defendant had not
 performed his Agreement. Defendant pleaded,
 that in making his Voyage upon the Sea, the
 Ship was taken p quosdam ignotos homines
 bellicosos, whereby he was hindered in making
 of the Voyage according to his Agreement.
 Plaintiff demurred. In this Case it was holden,
 K k 2 That

Perils of the
 Sea excepted.

Bar, that the
 Ship was ta-
 ken by Py-
 rates,

Covenant. That Pirates are Perils of the Sea; and to that Purpose a Certificate was read that they were so esteemed amongst Merchants; wherefore it was holden that the Plea in Bar was good. *Styles 132. Pickering and Barkley's Case.*

Breach for Nonpayment of Rent. Upon a Covenant in an Indenture of Lease the Breach was for Non-payment of Rent. Defendant pleaded in Bar, that the Plaintiff entered into Part of the Land demised before the Rent was due, for which the Action was brought, and so had suspended his Rent. Plaintiff replied, the Defendant did re-enter, and so was possessed as in his former Estate. And it was held ill by the Court, because the Plaintiff did not shew that the Defendant continued the Possession till the Rent grew due, but only that he possessed in his former Right; but the Plea in Bar was a good Plea, and Judgment against the Plaintiff, *quod nil capiat per Billam*; *Styles 243. Page and Parr's Case.*

Bar good. *Vide 3 Keb. 858.* In Covenant, Breach for not repairing. Defendant pleads Entry into Part, and building, &c. Plaintiff demurred.

Bar by Assignment before Rent arrear. In Covenant against Defendants, Executors to C. Lessee for Rent in Arrear in the Defendants Time. Defendants plead Assignment before Rent Arrear, Plaintiff demurred — *Per Curiam*, tho' Debt may be in the Debt & Detention on the Executors Possession, and then such Assignment is a good Plea. *Contra* on express Covenant where the Executor is charged as such; but if charged as Assignee only, then the Plea were good of Assignment before Rent Arrear; and here Judgment must be *de bonis Testamentariis*, therefore Judgment for the Plaintiff, *nil*; *3 Keb. 367.*

A Cove

A Covenant that he is seised of a good Estate in Fee, the Plaintiff takes Issue by Recitation, that he was not seised of a good Estate in Fee. Defendant rejoins, that he is seised of as good an Estate as Sir J. W. who granted it to him had, which is nothing to the Purpose; for he must answer directly, and without Limitation, and Judgment *pro* *querente*, nisi; 1 *Keb.* 95.

In Covenant, That H. will carry so many Men to *Jamaica* as the Defend' should bring, not exceeding 180; in Consideration whereof the Defendant promised five Pound a Head: The Plaintiff said he carried 160, and the Defendant brought no more; the Defendant saith he brought 180, and none were ready to receive them in the Ship; Judgment for the Plaintiff, nisi, 1 *Keb.* 100.

The Plaintiff covenants, That if the Defendant would pay Forty Pound, he would convey as the Council of the Defendant should advise. And in Action of Covenant for the Money, the Defendant pleaded, That the Plaintiff did not Convey as the Council did advise, which *p Curiam* is naught, without particular shewing the Manner, and what the Council did advise. And,

2dly. These being mutual Covenants, cannot be pleaded in Bar one of another, which was assigned for Error. And Judgment affirmed, nisi, *Idem* 178. *Vide postea.*

In an Action of Covenant on Bottom-ree, That a Ship in the *Thames* should go a Voyage to *A. in Spain*, & non directe vel indirecte *debiaret*: The Defendant pleads general Performance; and on Demurrer, Exception

Covenant.

Vide antea.

Def. must answer directly without Limitation.

Bar, that he carried 160 Men, & Plaintiff brought no more.

Repl', he brought 180 Men.

That the Plaintiff did not convey as Council advised; is ill.

Mutual Covenants, one cannot be pleaded in bar of another.

Negative Covenant. Bar by Performance generally,

Covenant. that the Plea was ill, it being a Negative Cove- Colla
and ill. nant, to which the Court inclined; but if the ferenc
Covenant were entire, and had been only to
proceed directly to *A. &c.* it had been a suf-
ficient Plea; *Idem* 334.

Non locavit
no Plea on a
Lease of a
Quarry by
Indenture.

In an Action of Covenant on Demise of a
Freestone Quarry to the Defendant, the De-
fendant covenants not to dig in any other Part
of the Common; and Breach being assigned in
digging, Defendant pleads *non locavit* the
Quarry *pluit*; to which the Plaintiff demurs,
the Demise being by Indenture, and the Co-
venant Collateral: The Plea was held five-
lous; And Judgment for the Plaintiff, nisi,
Idem 751.

Departure.

In an Action of Covenant for not repairing
a House, the Defendant pleads Performance,
and after rejoins, that he was ousted by a
Stranger; which, *per Curiam*, on Demur-
rer of the Plaintiff, is a Departure. Judgment
for the Plaintiff, nisi; *Idem* 662.

Utlary plea-
ded.

Upon Covenant to pay Money, *Utlary* is a
good Bar; *Idem* 324.

Non infregit Conventionem is tried,
where the House not repaired is; *Idem* 575.

Breach for
Nonpayment
of Money on
Assurance on
a Day as De-
fendants
Council
should advise.

In an Action of Covenant on Articles of
Agreement, whereby the Plaintiff covenanted
to make an Assurance by a Day of Lands, as
the Council of the Defendant shall advise;
and on perfecting thereof, the Defendant is to
pay 300 *l.* and 300 *l.* more generally within
three Months when demanded: And now
Breach being assigned in Non-payment of the
whole, the Defendant pleads, the Plaintiff had
no Estate which he could convey: To which
the Plaintiff demurred, in regard this Payment
is

Bar,
That the
Plaintiff had
no Estate.

Collateral, and the latter is general, with Covenant. Reference to the former. But *per Cur'*, The first depending on the Assurance, the latter must be so, that is subsequent: So if no Assurance, nothing is to be paid, and so the Plea of the Defendant is good, altho' the Plaintiff averreth he was always ready to perfect it, and that the Defendant never tendred any, nor hath paid, &c. *præter Twisden*, who conceived it is at the Defendants Peril to cause an Assurance; and if the Plaintiff refuseth for to convey by Fine, &c. then he is liable, else not. But *per Curiam*, This is good in Action by the Defendant for Non-assurance; but here the Action is for Money, and so the Defendant hath Election to plead, as here, or that he tendred Special Conveyance by Advice, and the Plaintiff refused. Judgment for the Defendant, *Nisi, Idem pag.* 734.

H. prayed a Repleader in an Action of Another Collateral Covenant for Non-payment of Freight: The Defendant pleaded another Covenant in Bar, That the Ship was to be brought as near the City of London as could be; on which the Plaintiff took Issue, and Verdict for the Defendant: In which Case the Plea being insufficient, the Defendant never can have Judgment: As Payment pleaded to a single Bill found for the Defendant, 5 Co. 42. *Nichols, Det. Br.* 8. And in this Case the Freight is to be paid on Discharge of the Ship, and another Covenant to discharge as near as could be, &c. which are Collateral Covenants. The Court agreed the Difference. *Sed Adjournatur. Idem pag.* 763.

Another Collateral Covenant pleaded in Bar to a Covenant for Nonpayment of Freight.

Covenant.

General Release of all Demands.

Vide antea.

Vide 1 Inst.
510.

Custom of
London to turn
over an App-
rentice.

Moved in
Arrest of
Judgment.

In an Action of Covenant for Rent Arrears on Lease for Years: The Defendant pleaded a General Release of all Demands, (which was made by Award on Collateral Differences between them) made after the Covenant and before the Rent due: To which the Plaintiff demurred, for that the Cause of the Release was particular and collateral. And Judgment for the Plaintiff nisi, *Idem* pag. 499, 510, 511. 2 Cro. 107, 486. Mo. 544. Et vide *Bridgman* 124 & 20. Aff. 5.

See 3 Keble 814. Release of all Demands Demurrer because the Release is particular and bars not for a Covenant broken; so after Cause of Action by Battery, Release of all Demands in personal Estate no Bar, 3 Keb. 418. A Covenant broken is not discharged by Release to Executor of all Demands of personal Estate of the Testator.

In an Action of Covenant, it was moved in Arrest of Judgment (shewing the Custom of London, to turn over an Apprentice from one to another; and that such, to whom such Apprentice is turned, may have an Action of Covenant) upon Special Issues, on the several Breaches assigned, and Verdict for the Plaintiff. First, That the Breach *quod absit* sit a *terribilis* so many Nights, and during that Time did not serve him: Which *per Curiam* being found against him, is good enough. Secondly, That he did not serve according to his Covenants, whereas no Covenant was made with the Plaintiff; yet if this second Covenant had been omitted, it had been good enough, and the Conclusion, and *sic non tenet* Conclusion made with the Plaintiff, is as well as could

ould be; Judgment for the Plaintiff; 1 *Keb.* Covenant.

250.

Note, A Covenant to instruct an Appren- binds Executors, *Idem* 761.

In an Action of Covenant of Apprentice- Defendant
the Defendant pleaded Infancy; The Apprentice,
Plaintiff replies by Custom of *London*; to which pleads Infan-
the Defendant demurred: Some held it a De- cy, &c.
ature, as *Pl. Com.* 105. *Hutton* 63. 1 *Inst.* 304.
Way 76. 37 *H.* 6. 5. Others not, as 21 *H.* 7.
3 *Cr.* 652. *Vide Moo.* 135. *Pl.* 280. *Godb.*
22. *Pl.* 143.

Some said the Count ought to have been on
the Custom, it being the very Ground of the
Action; 3 *Cr.* 653. *Pl.* 12. *Walker* versus *Nichol-*
son; *Winch.* 63.

Others, that the Action is founded on the
Covenant, not on the Custom, as 21 *Ed.* 4. 6.
Pl. 17. *Br.* 42. *Infant Fitzb.* 2. & 5 *Eliz.* 4.
43. *b.* 1. Infant is not bound by Collateral
Covenants, but only of Apprenticeship; 6 *H.*
8. *Vide* 1 *Cr.* 159.

But at length the Court gave Leave to the
Plaintiff, (notwithstanding the Opinions) to
discontinue his Action, and rather than hang
up longer, begin *de novo*, and count on the
Custom of *London*, that an Infant may bind
himself Apprentice; *Idem* 376, 469, 512. *Vide*
Siderf. 142. *Pl.* 19.

Covenant upon an Indenture of Appren- Breach a-
ticeship, wherein the Defendant bound him- gainst Ap-
self to serve the Plaintiff for seven Years. The prentice up-
Plaintiff sets forth the Custom of *London*, That on Custom
any Person above 14 and under 21, unmar- of *London*.
ried, may bind himself Apprentice, &c. ac-
cording to the Custom, and that the Master
there

Covenant. thereupon shall have *Tale remedium* against him, as if he were 21, and alledges that the Defendant did go away from his Service, *per quod* he lost his Service for the said Term, (which Term was not expired.) The Defendant pleads a frivolous Plea, [*viz.* that he tendered his Return, *Absque hoc*, that he refused to serve, 2 Keb. 710, 687.] To which the Plaintiff demurs.

Heley, Tho' such a Covenant shall not bind an Infant, neither by Common Law, nor 5 Eliz. 1 Cr. 170. yet by this Custom it shall, in *Pasch. 21 Jac. B. R. Cole versus Holme*; there was such an Action against an Apprentice. The Defendant pleaded Non-age, the Plaintiff replied the Custom of *London*, and that the Indenture of Apprenticeship was inrolled, as it ought to be, &c. And this was certified by the Recorder, Serjeant *Finch*, to be the Custom. And thereupon Judgment was against the Defendant.

Jones, The Custom ought to have been alledged, That he should have an Action of Covenant against him, which is not done here; and Customs shall be taken strictly, not by Implication. Moreover, the Plaintiff declares for a Loss not yet sustained, the Term not being ended.

Cur', The Custom is sufficiently alledged, to give and make good an Action of Covenant. *Tale remedium* implies it, These Words are applicable to all Things relating to this Matter, *viz.* That the Master may correct him, may go to a Justice of Peace; And also may have an Action of Covenant against him, as against a Man of full Age. And tho' by Common

vid. Hutt. 63.
4 *Winch.*
63, 4.

Law

Law or the Statute, his Covenant shall not bind Covenant.
him; yet by the Custom it shall. But *Twisden*
desired to see *Offley's* Reports. As to the De-
claring for the Loss of the Term, Part whereof
is unexpired, tho' it has been adjudged naught
after a Verdict; yet in this Case, which is upon
Demurrer, it may be helped, for the Plaintiff
may take Damages for the Departure only,
nor the Loss of serving the Term, and then it
will be well enough. Judgment *Nisi, &c.*
Mod. Rep. pag. 271.

Action of Covenant brought by an Infant
per *Guardian suum*, for that the Plaintiff being
bound Apprentice to the Defendant by In-
denture, &c. the Defendant did not keep,
maintain, educate, and teach him in his Trade
of a Draper as he ought, but turned him away.
The Defendant pleads, that he was a Citizen
and Freeman of *Bristol*, and that at the Gene-
ral Sessions of the Peace there held, there was
an Order that he should be discharged of the
Plaintiff for his disorderly Living, and Beating
his Master and Mistress; and that this Order
was inrolled by the Clerk of the Peace, as it
ought to be, &c. To which the Plaintiff de-
murred.

Breach by
Apprentice
against the
Master.

Bar,
That he was
discharged by
Order of Ses-
sions.

It was said for the Plaintiff, that the Statute
of 5 *Eliz. cap. 4.* doth not give the Justices, &c.
any Power to discharge a Master of his Ap-
prentice, but only to minister due Correction
and Punishment to him.

Cur', That hath been over-ruled here, the
Justices, &c. have the same Power of dischar-
ging upon Complaint of the Master, as upon
Complaint of the Apprentice. Else that Ma-
ster would be in a most ill Case, that was trou-
bled

Covenant. bled with a bad Apprentice; for he could by no means get rid of him. Secondly, It was urged on the Plaintiff's behalf, that he had not for ought that appears any Notice, or Summons to come and make his Defence; *Vide 11 Co. 99. Baggs Case*: And this very Statute speaks of the Appearance of the Party, and the hearing the Matter before the Justice, &c.

Sanders pro Defendente. In this Case the Justices are Judges, and it being pleaded, that such a Judgment was given, that is enough; and it shall be intended all was regular.

Twisden and Rainsford: That which we doubt is, Whether the Defendant ought not to have gone to one Justice, &c. first, as the Statute directs, that he might take Order and Direction in it; and then, if he could not compound and agree it, he might have applied himself to the Sessions: For the Statute intended there should be, if possible, a Compromise in private; and the Power of the Session is conditional, (*viz.*) if the one Justice cannot end it. In case of a Bastard Child they cannot go to the Sessions *p. saltum*; and we doubt they cannot in this Case: It is a New Case. And then the Matter will be, whether this ought to be set down in the Pleading. *Adjournatur, Mod. Rep. p. 286, 287.*

Repleader prayed in Covenant: Breach, That the Defendant was not seised in Fee, Et sic conventionem fecit, &c. Defendant pleads, That he did not break his Covenant. Repl', That he did break his Covenant; whereas it should have been, That the Defendant was not seised in Fee. At length the Court agreed, that the Matter and Substance being tried, it is

is aided as an unformal Issue within 32 H. 8. *See 2 Keb. pag. 10, 13, 47, 51.*

Covenant to pay 30 l. when raised; *Non infregit conventionem*, ill Plea on Demurrer; 2 Keb. 342.

In Covenant for Rent, on *Nil debet* plead- ed, the Plaintiff demurr'd specially; because albeit the Covenant doth not alter the Rent, yet *Nil debet* cannot be pleaded. But the Court said, it was well enough. *Adjournatur.* *Idem* 347.

Covenant.

Unformal

Issue aided.

Non infregit Conventionem.

Nil debet, and Demurrer.

Breach in not

In an Action of Covenant, to repair and so leave the Premises: Breach in 60 Rood, &c. Defendant pleads, That one Barn was pull'd down by the Plaintiff's Consent; and as to the rest, That they were repair'd, and so left. To which the Plaintiff demurred generally, the particular Breach not answered. And *per Hales*, He should either have taken Issue *reparavit* the Particulars, or say they were not *in decasu modo & forma*; they conceived this but Form: But the Parties agreed to take Issue in one of the Points, 2 Keb. 798.

Covenant, to enjoy against lawful Impediment, is broken by Entry of one *Habens jus*, 3 Keb. 40. So by one *Clamans jus*, and not *legale*, *Idem* 163. Entry *Clamans titulum*, not laid by Stranger, and since the Covenant, no Breach; *Idem* 246.

Covenants on Articles, to bear Proportion to repair Sea-Banks. Defendant pleads, he had no Land as Heir since the Death of the Testator. Plaintiff demurs, and Judgment for the Plaintiff, the Suit being as Executor, and not as Heir; 3 Keb. 128.

Defendant answers as Heir, being Executor.

Covenant.
Covenant for
quiet Enjoy-
ment broke
by Lease with-
out Entry.

In Covenant on Indenture 8 Octob. 1652. of Demise to hold for 99 Years after the Death of Z. K. if three Lives so long live. Defendant pleads, That the Plaintiff *potuit uti* and enjoy the Premises without the Let of the Let for. To which the Plaintiff replies, That the Lands are and were Dutchy Lands, and that the King for Fine and Rent had devised the Reversion to H. for 99 Years if the three Lives live. by reason whereof he could not enjoy. Defendant demurs, and Judgment for the Plaintiff: All this being confessed by the Demurrer, the Plaintiff needs not shew that he entered, but the Defendant should plead it; 3 Keb. 162. 202.

Covenant on two Deeds of former Husband of the Defendant's Wife, to cut 12 of the best Trees, whereby the Plaintiff hath Election. And Breach is assigned, That before the Time the Defendant cuts down some of the Trees. Defendant saith, There were sufficient standing. To which the Plaintiff demurred. *Vide* 3 Keb. 477.

Release.

Covenant, no Duty, nor Cause of Action, till broken; and therefore not discharged by Release of Actions: *Allen's Rep.* 39. *Vide antea.*

To perform
Indentures,
and save
harmless.

Covenant to perform certain Indentures, and to save the Plaintiff harmless: He cannot plead generally Performance of Covenants, because some may be in the negative; and also he ought to shew how he saved him harmless: *Allen* 72.

Leaseought.

If the Lease is not good, there's no Covenant nor Breach; *Yelv.* 18, 19.

That *Warrantia Charte* depending, is Covenant.
 no Bar in Covenant, because personal; *Relv.* Other Action depending.

139. Concord certain and executed, pleaded to Concord.
 Covenant is good; *Relv.* 125. *Vide antea.*

Non performance of a Reciprocal Cove- Reciprocal
 nant, no Bar to an Action for the Breach of Covenant.
 another Covenant; *Jones's Rep.* 216. *Vide an.*

140. If Covenant be for further Assurance, it Bar, That the
 seems to be a good Plea, that the Fine in ano- Fine compriz-
 ther Assurance tendred, comprized more than ed more than
 was conveyed; 1 *Rolls* 103. convey'd.

If it be to levy a Fine of all the Messuages *Simile.*
 and Lands in *D.* and an Action is brought for Fine tendred
 not levying a Fine, which is tendred of more of more, &c.

and he had only one at the time of the Fine; 'tis a
 good Bar that the Fine was of two Messuages,
 and he had only one at the time of the Fine;
 1 *Rolls* 117, 118.

In Covenant the Defendant pleaded the Sta- Non-resi-
 tute of 13 *Eliz. cap.* 10. and 14 *Eliz. cap.* 11. dence.
 concerning Non-residence.

See more in *Tit. Debt* at the Beginning.

Note, That all Covenants between the Les-
 for and Lessee, are Covenants in Law,
 Express Covenants; *Vaughan's Rep.* 118.

An Express Covenant, restrains the Gene-
 ral Covenant in Law; *Idem* 126.

Where the Covenant is to enjoy against one
 or more particular Man, and where against
 all Men; *Idem* 127.

By a Covenant in Law the Lessee is to en-
 joy his Term, against the lawful Entry or In-
 terruption

terraption of any Man ; but not against Tortious Entries, because the Lessee hath his proper Remedy against the Wrong Doers ; *Idem* 118, 119.

If a Stranger, who hath no Right, outs the Lessee, he shall not bring Covenant against the Lessor, because he hath Remedy by Action against the Stranger : But if he enter by elder Title, then he shall have Covenant, because he hath no other Remedy ; *Idem* 119, 120.

Tho' the Covenant is, That the Lessee shall enjoy against all Persons ; yet he shall not have Covenant against the Lessor, unless he be legally outed ; *Idem* 119, 120, 121, 123.

The Law will never adjudge that a Man covenants against the wrongful Acts of Strangers, except the Words are full and express ; *Idem* 121.

When the Covenant is to enjoy against all Men, the Covenant is not expressly to enjoy against tortious Acts, neither will the Law interpret it, *Idem* 123, 125.

What Collateral Matters shall be implied upon a Covenant, *Vide* 1 *Ventr. Rep.* pag. 26, 44, 45.

Tho' a Covenant be made only to a Man, his Heirs and Assigns ; yet if a Breach be in his Life-time, his Executors may bring the Action for Damages, *Idem* 176.

That a Covenant for quiet Enjoyment may bind, notwithstanding a subsequent Act of Parliament to alter the Title, *Idem* 175, 176.

In an Action of Covenant the Defendant cannot plead, That the Plaintiff temporally, *quo, nihil habuit in tenementis* ; tho' such

which Plea in an Action of Debt for Rent is
good; 2 *Ventr. Rep.* 99.

Covenant to repair a House, if the Lessee
comes without Licence after the Term ended
to repair the House, he is a Trespasser; 2 *Rolls*
150.

Note, The Difference between Covenants
in gross, and Covenants grounded upon
a Lease: Covenants having a Lease for
their Foundation, are within the *Proviso*
of the Statute of 13 *Eliz.* but not in gross;
2 *Rolls* 401.

Of Pleas after the last Continuance.

WE mentioned before something con-
cerning Pleas after the last Continu-
ance; and therefore as a Conclusion to this
part, will make an end of that Matter.

These Pleas are sometimes in Abatement,
and sometimes in Bar, Dilatory or Peremp-
tory.

And first, note, that it is said, That a Man
shall have but one Plea after the last Continu-
ance, 4 *H. 7. fol. 8.* 38 *H. 6. fol. 33.* and the Rea-
son is, because the Plaintiff shall not be delay-
ed *ad infinitum*; 16 *H. 7. 11.*

See *Bro. tit. Continuance*, 5, 21, 41, 45, 46,

And by 9 *H. 7. fol. 8.* a Man shall not have
Plea after the last Continuance, unless such
Pleas were not in being at the Time of the first
Plea; for otherwise it is not after the last
Continuance.

What Pleas
a Man may
have after the
last Continu-
ance.

At the *Nisi Prius* a Man may plead a Plea after the last Continuance, 28 H. 6. 1. By the 16 Ed. 4. fol. 5. a Man may plead a Plea after the last Continuance, after Issue joined, and in another Term till Verdict; but not Mean between *Nisi Prius*, and the Day in Bench.

And by 21 H. 6. fol. 10. Bro. tit. *Four, &c.* 31. tit. *Continuance*, 13, 27, 42, 76. the Day of *Nisi Prius*, and Day in Bank, are all one; so that a Release made betwixt these Days cannot be pleaded in Bank; but it seems that a Release made between the Day of the *Venire Facias* return'd, and the Writ of *Nisi Prius* awarded, and the Day of the *Nisi Prius*, may be pleaded at the Day of the *Nisi Prius*, but not alter the Verdict.

What Pleas
he may not.

By *Brook*, in his Abridgment, tit. *Continuance*, 61, 83. after the Inquest is awarded, to enquire of Damages, the Defendant cannot plead a Plea after the last Continuance, because he hath no Day in Court to plead. *Vide* 1 H. 7. 21.

So after the Inquest taken by Default, and before Judgment, the Defendant came and pleaded an Arbitrement made after the last Continuance: And by the Opinion of the Court, he had no Day in Court to plead this Plea; and 'twas said, That he could plead no Plea in such Case, but as *Amicus Curie*, and of Matter apparent he shall be received, otherwise he must resort to his *Audita Querela* 28 H. 7. 33. Bro. tit. *Continuance*, 38.

For Default
of Jurors.

But if the Jury remain for Default of Jurors, the Defendant may plead a Release, &c. at the Day in Bank after the last Continuance, altho' he did not offer it at the *Nisi Prius*. Other-
wise

Plea if the Jury had been taken at the *Nisi Prius* ; 22 H. 6. 1. b. Bro. ib. 30.
 If it be pleaded at the *Nisi Prius*, the Court Plead at
 will record the Plea, and discharge the In- the *Nisi Prius*.
 quest, and give Day to the Parties in Bank ;
 Id. 34.
 In Debt, after Issue joined, the Defendant By Payment
 the *Nisi Prius* pleaded Payment of Part, af. of Part.
 the latter Continuance in Abatement ; and
 the Jury being discharg'd, and the Plea ad-
 journ'd in Bank, the Plaintiff had Judgment
 to recover his Debt, for that no Place of Pay-
 ment was pleaded, and because after Issue
 join'd no *Respondeas ouster* can be awarded ;
 Id. 4. 139. Vide Allen's Rep. 66. Vide antea.
 It is also to be observed, That Pleas after The Pleas
 the last Continuance ought to be certainly must be cer-
 tain.
 In a Writ of Entry in the *Post*, the Tenant By Entry and
 may plead Entry of the Demandant after the Misnomer.
 last Continuance : And the same Law is of
 Misnomer ; 2 H. 6. 13. Vide postea.
 In a Writ of *Dower* of three Manors, it In Dower.
 was pleaded in Abatement, That the Deman-
 dant entred into Parcel, after the last Continu-
 ance : By this Plea the entire Writ is abated.
 Id. 6 E. 6. Dyer 76. b. Vide postea.
 Et vide 8 Ed. 4. fol. 9. Where a Man plead- By Death
 of the Defendant hanging the Writ, pendent i breve.
 and said, he shall not plead that after the last
 Continuance ; for that by this the Writ is
 abated in Deed. Contrary of a Plea which
 proves the Writ abateable.
 Per Curiam, the Defendant may not plead, Plea must be
 That the Plaintiff was made a Bishop pending after the last
 the Writ, or that the Wife took a Husband Continuance
 L 1 2 pending

Exception by
Death.

pending the Writ, after a *Darrein Continuance*, if so be he does not plead it after the last Continuance; 23 H. 6. 10, 11. But it is otherwise of Death, or that the Plaintiff was a *Feme Covert* the Day of the Writ purchased; because that by such Pleas the Writ is abated *de facto* and not only abateable. *Vide postea*.

By 34 H. 6. fol. 49. at the Day of *Nisi Prius* the Defendant pleads to the Writ, That one of the Plaintiffs was dead after the last Continuance at D. in the County of D. Judgment of the Writ, and the Plea recorded, and the Matter adjourned, and had that Plea. *Vide* H. 6. fol. 9.

Not to Person only, but such as may be either to the Action or Person.

By the better Opinion, after the last Continuance one may plead, That the Plaintiff was an Alien born, &c. But he cannot plead Matters to the Person only: (But such Pleas may be pleaded to the Person, or Action, at the Pleasure of the Party;) and after a Continuance one may plead Pleas in which he may conclude Judgment *si Alton*; but not Pleas to the Person: 32 H. 6. 23.

Quarto die.

And 28 H. 6. fol. 11. where the Parties and Jury appear at the 4th Day in the *Common Bench*, and are adjourned: At another Day a Man may plead a Plea after the last Continuance.

Must be after the last Continuance.

A *Præcipe* was brought by a Woman; the Tenant tenders his Law of Non-Summon, and at the Day was essoin'd, and at the Day said, That the Demandment took a Husband after the Law tendred; and for that, That he did not say, after the last Continuance (that is, after the Essoin) it was held no Plea: 3 Ed. 3. fol. 5.

In a *Precept quod reddat* the Tenant Tenant admitted to
 such'd and the Demandant counter-pleaded plead Out-
 Voucher by the Statute, and the Tenant lawry.
 would not attend ; but he said, the Demandant
 Outlaw'd, after the last Continuance in
 Court, and produced the Record, 21 Ed. 4.
quod Nota.

If the Demandant enter before Issue, the Entry plea-
 Defendant may plead in Abatement of the ded.
 Writ, That he entered pending the Writ : But
 he entered after Issue, then he shall say,
 that he entred after the last Continuance,
 H. 8. 3. b.

A Tenant by Receipt may plead an Entry Tenant by
 pending the Writ, without saying after the last Receipt.
 Continuance. Otherwise 'tis of him who was
 Party to the Suit ; for the Tenant by Receipt
 is a new Tenant, 21 H. 6. 47, 48, 49, &c.

If at the fourth Day the Parties are ad- *Quarto die.*
 journ'd to another Day, in such Case, al *quar-*
 die, upon a Special Entry made in the one
 Court, and the other, the Defendant may cast
 Protection, bearing Date after the Day, and Protection.
 he may plead a Plea after the last Continu-
 ance, 28 H. 6. 6.

He that prays to be received, altho' he be Received *de*
 received *de facto*, cannot plead, That the De- *facto.*
 Defendant entered after the last Continuance,
 totam Curiam. Otherwise 'tis of an
 Outlawry, Excommunication, Death, &c.
 by the Chief Justice he may plead Mar-
 in Abatement ; and the same Law is of
 Disseisor as to an Entry after the last Conti-
 nuance, 32 H. 6. 2. But *quare* of Outlawry
 and Excommunication.

By 31 H. 6. 10. if during the Time of Vacation a Person has cause to have aid of the Archbishop of York, so as he ought to have it of the Archbishop of Canterbury; in such Case (though after the last Continuance) another Archbishop of York is consecrated and install'd; yet the Person cannot have Aid of him, by the better Opinion; for that the Right which is perpetual is in the Metropolitan: Yet if Tenant for Life had Aid of the Reversioner, who dies, he shall have Aid of his Heir *de novo*; and so of the Successor of a Bishop. But if one had Aid of the Ordinary who dies, he shall not have Aid of the Metropolitan.

Defendant
pleads a Release in Bar,
which was not
between the
last Continu-
ance and *Utas*,
but after.

In Trespass, *Not guilty* being the Issue, the Jury appeared the first Day of *Hillary* Term, and the Defendant came and said, That the Inquest ought not to be taken; for that the Plaintiff had released him after the last Continuance. But because the Release was after the *Essoign-Day* of the *Utas*, and came not between the last Continuance and the *Utas*, the Plea was not allowed, but the Inquest was taken: But if it had been between, the Plea had been good. Yet the Form of the Pleading in this Manner was not good; for he ought to have said *Accord non*, and not, *This Inquest ought not to be taken, &c.* 20 Eliz. Dyer 31. Sed, vide postea 461. where in Abatement at Assizes, 'tis pleaded that the Justices ought not to proceed to take the Jury.

Essoign-Day
the first Day
of the Term.

Note, That the Day the Jury appeared was not properly the first Day of the Term, for the *Essoign-Day* is reckoned properly the

the first Day of the Term, which was **Octab Hill Jan 20.** and is the *Utas* or Eighth Day after the Feast of Saint *Hilary*; and the first Day of the Term when the Jury appeared was *Jan. 23.* being a Day of Grace given for Appearances. The Release was dated the 21st, which was *Monday*, next Day after the *Essoin* or Day in Court, and so not between the last Continuance ante **Octab in Hill**; for it ought to be *post ult Continuacione* & ante **Octab Hill**. See *Hutton 95. 2 Leon. 10.* See many Cases, 4 *Ed. 4. 34 H. 6. 20.*

Quære, If this had been by Continuance in the *King's Bench*, whether it had not been otherwise, because the Day is certain; as *die Mercurii prox' post Octab Sed Hillarii ult' p'tit* *Ad quem diem, &c.* and then it seems the Date of the Release was well enough.

Quando, &c. Et dicit quod post ultimam continuacionem p'lit' p'dict' videt post Octab Sed Hillarii ult' p'tit in quibus processus inde continuat fuit usq; ad hunc diem scilicet ad Octab Sed Trinitat' tunc prox' sequen' & ante has Octab Sed Trid' p'dict' R. intravit in terram p'dict' cum p'tid' & ipsum S. de tenetis illi (&c.) expulit & amovit, & qd idem R. inde est scitus in Unico suo ut de feodo Et hoc paratus est verificare (&c.) Unde, &c. Vide plac. Gen. fol. 1. bis.

That the Plaintiff entered after the last Continuance.

That the
Plaintiff was
made a Knt.

¶ **A**d quem diem Jur inter partes
p̄dia' de p̄dia' p̄lito possit fari
inde inter eas in respon̄ hieusq; ad hunc
diem scilt (Ec.) tunc p̄r sequend Ec
modo hic ad hunc diem ven̄ tam p̄dia'
Quer' per C. W. Altor̄ suum quam
p̄dia' Defend' per R. B. Altor̄ suum
Et idem Defend' dicit quod p̄dia' Quer'
post Octab Sed Michis ult' p̄t̄ de quo
die loquela p̄dia' hic ad hunc diem ult'
continuae fuit suscepit ordinem milita-
rem videt apud W. in Com M. Et jam
miles existit Et hoc, Ec. Unde per judi-
cium de h̄i p̄dia' Ec.

See *Vidian*. 93: 3 *Brownl.* 436, 188. Ep̄us
est factus Archdep̄s. Co. Ent. 267.

That the
Plaintiff took
a Husband af-
ter the last
Continuance.

¶ **E**t dic' quod post ultimam conti-
nuacō p̄liti p̄dia' videt post
Crastin̄ Animarum ult' p̄t̄ de quo die
loquela p̄dia' ult' continuae fuit hieusq;
ad hunc diem videt Octab Sed Hillar
Et ante ad hunc diem scilicet decimo
die Decembris Anno (Ec.) apud R. in
Com B. p̄dia' Maria cepit in Virum
quendam J. S. qui quidem J. S. ad
huc superstes Et in plena vita existit
videt apud R. p̄dia' Et hoc (Ec.) Un-
de, Ec.

Note, A Defendant cannot take such Ad-
vantage by her own Act; but only against the
Plaintiff's Act.

Cassari

Repl.

Cassari non debet Quia dicit quod
 p̄dica' Crastin' Anim' & ante p̄dica'
 p̄dica' Sed Hic ipsa Maria non cepit
 p̄dica' J. S. in virum suum put p̄dica'
 Maria allegavit Et hoc per, &c.
 Vide Pl. Gen. 4. 134. Thomps. i.

Ad qm̄ diem coram Dño Rege apud
 Westm̄ vend partes p̄dica' per At-
 t̄ suos p̄dica' Et p̄dica' G. dicit quod
 p̄dica' S. per nomen (&c.) per quoddam
 scriptum suum quod item G. p̄fert hic
 Cur eidem G. post iudicium reddit
 videt die Martis proxima post quin-
 denam Sancti Martini usq; quam qui-
 denam quindenam Sed Martini loquel
 p̄dica' a p̄dica' Q̄ab Sed Trin' ultimo
 continuat fuit apud B. in Cor̄d L. p̄m̄
 deliberat remisit relaxavit & omnino p
 se & heredi suis imppetuum quiet cla-
 mavit p̄fate G. per nomen G. H. de (&c.)
 omnes executō quozumcunq; iudicioꝝ
 in Cur̄ Dñi Regis vel alibi vsus ipsu
 G. reddit & omnimod actōes p̄sonales
 quas vsus ipsum G. unquam fuit seu
 quovismodo in futur̄ here potuit racone
 quacunq; a p̄ncipio mundi usq; diem
 consec̄ōis ejusdem scripti Et hoc pa-
 rat est verificare, unde petit iudicium si
 p̄dica' S. aliquam executō vsus eum
 de debito & dampnis p̄dica' in hac pte ha-
 bere debeat &c.

*En Scire fac'
 d'aver Exec'
 sur rec' en det.
 Bar per Releas
 ap's le judgme.
 prim. deliberat.*

Et

Repl.

*Qd' le Release
fuit fait per
dures in auter
lien.*

Et p̄dia' S. dicit quod ipse ab Exe-
cucōn debi & dampnon p̄dia' in
hac parte hend p aliqua p̄allegata p̄e-
cludi non debet quia dic quod idem S.
tempore confecōn scripti p̄dia' fuit im-
p̄isonat p p̄dia' G. & alios de Cobina
sua apud D. in Com B. & ibm in p̄i-
sona detent quousq; idem S. Scriptum
p̄dia' per vim & duriciam Imp̄isona-
menti illius p̄far G. fieri fecit sigillabit
& deliberabit Et hoc paratus est verifi-
care unde petit iudiciū & execucon p̄dia'
sibi in hac parte adjudicari, &c.

Rejoinder.

*Qd' fuit ad
largum.*

Et Issue.

Et p̄dia' G. dicit quod p̄dia' S. tem-
pore confecōn scripti p̄dia' fuit sui ju-
ris ad largum & extra quamlibet p̄i-
sonam & quod ipse scriptum illud ex-
mera & spontanea voluntate sua eide G.
sigillabit & deliberabit & non per vim
& duriciam Imp̄isonamenti put p̄dia' S.
superius p̄litand allegavit Et de hoc
pon se super p̄riam Et p̄dia' S. similie
Nō p̄rec est vic B. quod venie fac, (&c.)
de visū de D. per quos, &c. Ad recogni-
super Sacm suū si idem S. (tempore
confecōn cuiusdam scripti relaxacōn qd
p̄dia' G. in Cur nrā coram nobis in
exoneracōn cuiusdam iudicii vsus ip-
sum ad sectam eiusdem S. nuper in Cur
nrā ville P. in p̄lito debi protulit) fuit
imp̄isonat per eundem G. & alios de
Cobina sua in Castro W. in Com tuo &
in p̄isona ibm detent quousq; p̄dia' S.
Scriptum p̄dia' per vim & duriciam
impr̄i-

imprisonamenti illius p̄fat G. fieri fecit
 sigillavit & deliberavit p̄ut p̄dia' S.
 suppon̄ vel non, immo idem S. tempore
 confectō scripti p̄dia' fuit sui juris ad
 largum & extra quamlibet Prisonam
 quodq; idem S. scriptum illud ex mera
 & spontanea voluntate sua p̄fat G. fecit
 sigillavit & deliberavit & non p̄ vim &
 duriciam imprisonmenti p̄ut idem G.
 suppon̄ Qui tam, &c.

Postea (Ec.) die (Ec.) quod p̄dia' S. *Verdict' sur*
 tempore confectō scripti infrasp̄c fuit *dures en des*
 sui juris ad largum & extra quamlibet *sur obl'.*
 prisonam & scriptum illud ex mera &
 spontanea voluntate sua p̄fat G. fecit &
 non per vim duriciam neq; coherc̄ im-
 prisonamenti p̄out p̄dia' G. infra pli-
 tando allegavit Et Am̄ dampn̄ occōne
 detracōn̄ (Ec.)

¶ Postea continuat inde p̄ces inter
 partes p̄dia' de plito p̄dia' per Jur' po-
 sit inde inter eas in respectu hic usq; ad
 hunc diem scilicet (Ec.) tunc p̄r sequen̄
 Et modo hic ad hunc diem ven̄ tam p̄re-
 dia' M. quam p̄dia' H. per Attorn̄ suos
 p̄dia' Et super hoc idem H. reliaa veri-
 ficatione sua p̄dia' per ipsum superius
 p̄tens die quod post ultimam continua-
 tion̄ pliti p̄dia' videt post (Ec.) ulti-
 mum p̄terit de quibus loquela p̄dia'
 continuata fuit hic usq; ad hunc diem
 scilicet (Ec.) & ante eandem quindenam
 Pasche videt vicesimum quartum diem
 Januarii Anno (Ec.) p̄dia' M. per no-
 men

Aliter.
 Releaseplead-
 ed after the
 last Continu-
 ance.
 Issue relin-
 quish.

men (Ec.) per quoddam scriptum suum relaxacionis factum apud A. pdia' quod idem H. sigillo pdia' M: signat hic in Cur pferit cujus dat est eisdem die & anno remisit relaxavit & omnino de & p se heredi & executor suis imperpetuum quiet & clam eisdem H. per nomen (Ec.) omnes & omnimodi acciones tam reales quam personales seu querel calumny libe demand que & quas idem M. Huius ipsi sum H. unquam fuit seu quovismodo extunc here potuit ratione vel causa quacumque ab origine mundi ad diem confectionis ejusdem scripti relaxacionis Et hoc pat est verificare unde petit iudiciu si pdia' M. accion Ec.

Issue Non est factum.

Release pleaded in Abatement at the Assizes after Issue joined.

Et pdia' C. in propria persona sua venit & dicit quod pdia' Justic Und Regis hic ad capcon Jur pdia' inter ipsi sum C. & pfae M. pcedere non debent quia die quod post duodecimum diem februarii ult pterit de quo die Jurat pdia' int partes pdia' continuat fuit & ante hunc diem [scilicet diem de Assize] scitit decimo die Martii anno (Ec.) apud, Ec. pdia' M. per nomen, (Ec.) remisit relaxavit, (Ec.) Et hoc, (Ec.) unde petit iudiciu Et quod Justic pdia' ad capcon Jur pdia' ulterius pcedere nolunt.

This may serve for any of the other at the Assizes, mutatis mutandis, in Abatement or Bar.

Vide

Vide And. Rep. 155. Rast. Ent. 549. 1 Brown. 106. 13.

Vide Winch. Ent. 714. als 824. in Quare Imp ad Sec' Regis Ed Rex post ult Cont Ven fa' & ante diem Aliz relaxavit Def' & pardonabit Simoniam.

Al Pi. prius acquietanc p'litat, Rast. Ent. 180.

Per Concordiam p'litat, Rast. 122. Thomps. 3. 22.

Per Arbitriū p'litat, Rast. Ent. 498.

Death of one of the Defendants pleaded after the last Continuance.

Et p'dict' Defend' p' A. B. Attorū suū ven' Et p'dict' C. non ven' Et super hoc p'dict' Defend' dicit quod post ult Continuatōm placiti p'dict' scilicet post 15 Pasche ult p'tit de quo die loquela p'dict' ult continuat fuit hic usq; ad diem scilicet in Crō Sed Trin tunc p' sequen & ante eundem diem scilicet decimo die Marti ult p'tit p'dict' C. apud A. p'dict' obiit Et pet' quod null' process' nec aliquid aliud in p'lito p'dict' ulterius vers' fiat C. fiat Et quia p'dict' J. & R. hoc non dedic' Ideo null' process' nec aliquid aliud in p'lito p'dict' v'lus fiat C. fiat, &c.

2u. If not rather, & ante eund' Crm' Trin'.

Vide antea Tit. Abatement.

Vide 2 Bro. 111. Winch. Ent. 818. 1 Mod. Ent. 308. Def. obiit 1 Bro. 348. Rast. Ent. 108, 340. 1 Towns. Judg. 140.

Tenens

Tenens in particond obiit post **VD** **id**
agard, Rob. Ent. 342. Ast. 331.

Petens obiit, Hern. 412.

Quer' obiit post ult' Cont, Cl. Ast. 6.
Rast. 226. 3 Brownl. 130.

Ur' quer' obiit in Quare Imp' &c.
Winch. Ent. 771. Vir obiit in Quare Imp'
556.

Patronus Def' obiit, Co. Ent. 517.

Und' Def' obiit post veredict' & quer' non
pro' al' **ND** **VD** 1 Towns. Jud. 132, &c.

THE

T H E T A B L E.

A.

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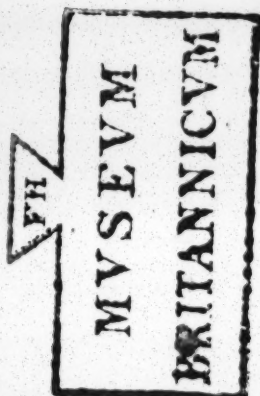
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